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WAKE COUNTY, NC 472
LAURA M RIDDICK
REGISTER OF DEEDS
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DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
HORTONS CREEK

Drawn by and after recording return to:
Michael F. King, Esq.
Kennedy, Covington, Lobdell & Hickman, L.L.P.
4350 Lassiter at North Hills Avenue, Suite 300
Raleigh, NC 27609

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STATE OF NORTH CAROLINA
COUNTY OF WAKE

**DECLARATION OF COVENANTS,
CONDITIONS AND
RESTRICTIONS FOR
HORTONS CREEK**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made as of the date of its recordation in the Registry, by **BAKER RESIDENTIAL OF THE CAROLINAS, LLC**, a Delaware limited liability company (the "Declarant"). All capitalized terms used herein shall have the meanings set forth in Article I or elsewhere in this Declaration.

WITNESSETH:

Declarant owns portions of that certain real property located in Wake County, North Carolina, and more particularly described on Exhibit A attached hereto and incorporated hereby by reference (the "Property"), which Property is being developed by Declarant as a residential community known as Hortons Creek.

Declarant desires to provide for the preservation of the property values, amenities and opportunities in the Project and for the maintenance of the Property and improvements thereon, and to this end desire to subject the Property to the easements, covenants, conditions, restrictions, charges and liens hereinafter set forth and/or described.

Although Declarant contemplates that separate easements, covenants, conditions and restrictions (which may include easements, covenants, conditions and restrictions similar to those herein contained) may be imposed with regard to the various phases or sections of the Project, Declarant desires to impose pursuant hereto easements, covenants, conditions and restrictions upon all of the Property, with the understanding that, at the option of Declarant, additional restrictions may be imposed with regard to the various phases or sections of the Project.

This Declaration creates a planned community under the North Carolina Planned Community Act (N.C. Gen. Stat. Chap. 47F).

NOW, THEREFORE, Declarant hereby subjects the Property to the easements, covenants, conditions, restrictions, charges and liens hereinafter set forth and hereby declare that (subject to certain rights of amendment, as hereinafter described) all of the Property shall be held, sold and conveyed subject to such easements, covenants, conditions, restrictions, charges and liens, all of which are for the purpose of protecting the value, desirability and attractiveness of the Project. Subject to the above-described amendment rights of Declarant, such easements, covenants, conditions, restrictions, charges and liens shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property, or any part thereof and shall inure to the benefit of each owner of the Property or any part thereof.

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ARTICLE I

DEFINITIONS

"Act" shall mean and refer to the North Carolina Planned Community Act, Chapter 47F, North Carolina General Statutes, as same may be amended from time to time.

"Additional Declaration" shall mean and refer to any Declaration of Covenants, Conditions and Restrictions filed in the Registry, with regard to a certain Phase, section or portion of the Property, as more particularly described in Article II, Section 2 hereof.

"Additional Property" shall mean and refer to additional real estate near or contiguous to the Property, all or a portion of which may be made subject to the terms of this Declaration in accordance with the provisions of Article II of this Declaration.

"Amenity Area" or "Amenity Areas" shall mean and refer to the parcel or parcels of land labeled "Amenity Area" or "Common Open Space Recreation Area" (or a similar term) on a Plat, together with any parking area, gazebo, tot lot or playground, or other recreational amenity or facility constructed or placed thereon for the common use and enjoyment of all Owners.

"Architectural Control Committee" shall mean and refer to the committee appointed by the Board to oversee the development and enforcement of architectural control standards and restrictions with respect to the Project and to perform certain other functions described in the Declaration.

"Architectural, Design and Landscape Guidelines" shall have the meaning as set forth in Article VIII hereof.

"Articles of Incorporation" shall mean and refer to the Articles of Incorporation for the Association.

"Association" shall mean and refer to HORTONS CREEK COMMUNITY ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns.

"Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

"Buffer Area" shall mean and refer to any environmentally protected area or tree save area within the Property that is regulated by federal, state or local law, including, Neuse River Basin buffer areas, wetland areas, and streetscape yards.

"Bylaws" shall mean and refer to the Bylaws for the Association, as same may be amended from time to time.

"Certificate of Occupancy" shall mean and refer to any required certification issued by the appropriate governmental authorities as a prerequisite to occupancy of any structure on the Property.

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"Common Area" or "Common Areas" shall mean and refer to the Amenity Area, Parking Area(s), Entrance Monument Signage and Landscaping Easements, Stormwater Facilities, Street Identification Signs, Street Lights, Buffer Area and the Roadways, including any sidewalks, water, sewer or storm drainage facilities and other improvements located therein (prior to their acceptance for maintenance by the North Carolina Department of Transportation or other governmental entity), collectively, and any other property specifically shown and designated on any Plat as "Common Area," "Common Open Area," "Common Open Space," "Open Space," "COS," "Streetscape Buffer," "Drainage Easement," or "Stormwater Control Structure and Access Easement" or other similar designation. The Common Areas shall be initially owned by the Declarant, and ultimately owned by the Association, except as otherwise provided herein, for the common use, benefit and enjoyment of the Owners. The Declarant reserves the right, but not the obligation, to provide additional Common Areas within the Project.

"Declarant" shall mean and refer to Baker Residential of the Carolinas, LLC, a Delaware limited liability company, its successors in title and assigns, provided that any such successor-in-title or assign shall acquire for the purpose of development and/or sale all or substantially all of the remaining undeveloped or unsold portions of the Property and, provided further, that in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance.

"Declarant Control Period" shall mean and refer to the period of time during which the Declarant may appoint or remove the members of the Board of Directors of the Association. The Declarant Control Period shall terminate on the Turnover Date (as defined in Article IV, Section 3).

"Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions as same may be amended and/or supplemented from time to time as herein provided.

"Dwelling Unit" shall mean and refer to a residential dwelling located upon a Lot.

"Entrance Monument Signage and Landscaping Easements" shall mean and refer to the easements granted to Declarant and the Association in Article X hereof over, across and under certain areas of the Property and certain areas outside of the Property, for the installation and maintenance of entrance monuments, landscaping and related improvements for the Project, all as more particularly described in Article X.

"Fiscal Year" of the Association shall mean the calendar year until such time if ever as the Board establishes a different fiscal year for the Association.

"Guidelines" shall mean and refer to the Architectural, Design and Landscape Guidelines.

"Impervious Surface" shall mean and refer to any Improvements which cannot be penetrated by surface water, as determined under applicable governmental regulations.

"Improvement" shall have the same meaning as set forth in Article VIII hereof.

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"Legal Requirement" is defined as and includes any duly adopted and applicable law, ordinance, regulation or requirement of the United States of America, the State of North Carolina, the Town of Cary, the County of Wake, North Carolina, or any other governmental entity or quasi-governmental entity or agency having jurisdiction over the Property or any portion thereof, including any branch, department or division of any of the foregoing governmental and quasi-governmental entities.

"Lot" shall mean and refer to any numbered or lettered tract of land (excluding any Common Area) shown on any Plat which is a part of the Property and which shall be restricted for such uses as are consistent with this Declaration and any other restrictions covering the area wherein the tract of land is located. No tract of land shall become a "Lot" as that word is used herein until a Plat of the area in which the same is located is recorded in the Registry.

"Maintenance Areas" shall have the meaning as set forth in Article X hereof.

"Member" shall mean and refer to every person or entity who holds membership in the Association.

"Mortgage" shall mean any mortgage or deed of trust constituting a first lien on a Lot.

"Mortgagee" shall mean the owner and holder of a Mortgage at the time such term is being applied. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

"Occupant" shall mean and refer to any person occupying all or any portion of a Lot or the Property for any period of time, regardless of whether such person is a tenant of the Owner of such Lot or portion of the Property.

"Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot or other portion of the Property (excluding any Common Area), and shall include Declarant as to any Lot or other portion of the Property owned by Declarant unless otherwise qualified herein, but excluding those having such interest merely as security for the performance of an obligation.

"Parking Area" shall mean and refer to the parking lot or lots which may be constructed over certain portions of the Common Area(s), including, without limitation, the Amenity Area, for the common use, benefit and enjoyment of the Owners, their families, guests and invitees.

"Person" shall mean and refer to any natural person, corporation, joint venture, partnership (general or limited), corporation, association, trust or other legal entity.

"Phase" shall mean and refer to any phase, section or portion of the Property for which a separate Plat or Plats are recorded in the Registry.

"Plat" shall mean and refer to any plat of the Property or any part of it which is recorded from time to time in the Registry.

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"Project" shall mean and refer to the residential development and amenity areas being developed by Declarant on the Property and commonly known as Hortons Creek .

"Property" shall mean and refer to that certain real property located in Wake County, North Carolina, and more particularly described on Exhibit "A" attached hereto and incorporated herein by reference, as well as such additional property as may be made subject to the provisions of this Declaration pursuant to the provisions of Article II hereof.

"Registry" shall mean and refer to the Office of the Register of Deeds of Wake County, North Carolina.

"Roadways" shall mean and refer to the rights-of-way, roads, streets, entranceways and cul-de-sacs in the Project including all utilities located therein, as shown on the Plats, and any other rights-of-way, roads, streets, entranceways and cul-de-sacs on the Property including all utilities located therein, all to be privately maintained by the Declarant until accepted for maintenance by the North Carolina Department of Transportation or other governmental entity or until accepted for private maintenance by the Association, as set forth herein.

"Rules and Regulations" shall mean reasonable and nondiscriminatory rules and regulations as may be adopted from time to time by the Association, provided notice of such rules and regulations has been given to Owners in accordance with the requirements of this Declaration.

"Stormwater Facility" or "Stormwater Facilities" is defined as any one or more of the following that serves or benefits any part or all of the Property or is required by Legal Requirements in connection with any part or all of the Property, whether located in the Property or outside of the Property: (i) "drainage easements" (also referred to herein as "stormwater easements" or "stormwater drainage easements") that are shown on plats of the Property recorded in the Registry or established by written instruments recorded in Registry, and which either are located on the Common Area or benefit or serve more than one (1) Lot; and (ii) all stormwater management facilities for the Property including ponds, man-made or natural areas and/or planted or landscaped areas into which stormwater drains, or in which stormwater is collected, or from which it is discharged, drains, pipes, conduits, inlets, swales, creeks, streams, channels, dams, ditches, filters, buffers, bio-retention areas, level spreaders, constructed wetlands, and other equipment, facilities and stormwater management measures used for inspecting, monitoring, measuring, testing, collecting, controlling, transporting, conveying, handling, storing, discharging and/or managing stormwater. Except as otherwise provided herein, Stormwater Facilities are part of the Common Area, and maintenance of Stormwater Facilities is a common expense. References in the Declaration to stormwater management include all applicable Stormwater Facilities, Stormwater Agreements and Stormwater Maintenance Manuals.

"Stormwater Facility Agreements" (which term includes any other agreement under Legal Requirements, by whatever name denominated therein, relating to Stormwater Facilities) is defined as any agreement required by any Legal Requirement between the Town of Cary and the Declarant or between the Town of Cary and the Association, or among the Town of Cary, Declarant and Association, or between or among any combination of the Town of Cary and the

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Declarant, the Association and one or more Owners, relating to maintenance of Stormwater Facilities. Particular reference is hereby made to that certain Stormwater Facility Agreement encumbering the Property entitled "Stormwater Control Structure and Access Easement and Agreement" recorded in Book 12609 at page 26 in the Registry.

"Stormwater Maintenance Manual" (which term includes any other instrument or document under Legal Requirements, by whatever name denominated therein, addressing the same or similar matters) is defined as the specific requirements for maintenance of Stormwater Facilities as required by the Town of Cary. Particular reference is hereby made to that certain Stormwater Maintenance Manual establishing the maintenance requirements for certain Stormwater Facilities within the Property entitled "Stormwater Control Structure Wet Detention Basin Maintenance Agreement" recorded in Book 12609 at page 32 in the Registry, which Stormwater Maintenance Manual is attached as Exhibit B and incorporated herein by reference.

"Street Identification Signs" shall mean and refer to those certain street identification signs, stop signs, yield signs and speed limit signs owned or leased by Declarant or the Association and installed upon, along and/or over the rights-of-way of the Roadways, Parking Area(s) (if any), Maintenance Areas and Common Areas.

"Street Lights" shall mean and refer to those certain street lights owned or leased by Declarant or the Association and installed upon, along and/or over the rights-of-way of the Roadways, Parking Area(s) (if any), Maintenance Areas and Common Areas.

"Supplemental Declaration" shall mean and refer to any Supplemental Declaration of Covenants, Conditions and Restrictions filed in the Registry, to bring additional property within the coverage of this Declaration and the jurisdiction of the Association, as more particularly described in Article II hereof.

"Supplemental Declaration" shall mean and refer to any Supplemental Declaration of Covenants, Conditions and Restrictions filed in the Registry to bring additional property within the coverage of this Declaration and the jurisdiction of the Association, as more particularly described in Article II hereof.

"Turnover Date" shall have the meaning set forth in Article IV, Section 3 hereof.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Property Made Subject to this Declaration. The Property is hereby made subject to this Declaration and the Property shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Association, each Owner and each party owning record title to any of the Property subject to this Declaration and the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration.

Section 2. Additions to the Property.

(a) Declarant may cause Additional Property (including Common Areas) to be made subject to the terms and scheme of this Declaration by filing one or more Supplemental Declarations in the Registry, containing a description of the Additional Property and a statement by the Declarant of its intent to extend the operation and effect of this Declaration to the Additional Property. Notwithstanding the foregoing, the covenants and restrictions established herein as applied to, or imposed upon, the Additional Property may be altered or modified by the filing of one or more Supplemental Declarations as provided in Subparagraph (b) below.

(b) Any Supplemental Declaration may contain complementary additions to the covenants and restrictions contained herein as may be necessary in the judgment of the Declarant to reflect the different character of the Additional Property. In no event, however, shall any Supplemental Declaration revoke, modify or add to the covenants and restrictions contained herein with respect to the Property, nor revoke, modify, change or add to the covenants and restrictions established by previously filed Supplemental Declarations, without meeting the requirements for amendment set forth in this Declaration.

(c) In addition to the controls, covenants, conditions, restrictions, easements, development, architectural and landscape guidelines, charges and liens set forth in this Declaration, Declarant shall have the right, at its election without the consent of any Owner or Owners, to subject any Phase, section or portion of the Property owned by Declarant to additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens, by filing an Additional Declaration in the Registry covering only such Phase, section or portion of the Property. Such an Additional Declaration may or may not provide for the establishment of a property owners' association to govern the ownership and/or maintenance of the Property affected by and the enforcement of the provisions of such Additional Declaration. Whether or not a property owners' association is formed pursuant to such Additional Declaration, the Association shall have the right and authority to enforce all controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens imposed by such Additional Declaration and any amendments thereto, whether or not such right and authority is expressly provided for in such Additional Declaration.

(d) Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed that, so long as Declarant owns any part of the Property, the prior written consent of Declarant shall be required for any parties to modify, change and/or amend, in whole or in part, the terms and provisions of this Declaration, any Supplemental Declaration, any Additional Declaration and/or the Bylaws or to impose new or additional covenants, conditions, restrictions or easements on any part of the Property.

ARTICLE III

PROPERTY RIGHTS

Section 1. Ownership of Common Areas. The Declarant shall have the right (but shall not be obligated) to construct within the Common Areas, among other things, (i) the Street Lights (which may be leased or purchased from a third party) and other lighting, signage and irrigation facilities, (ii) the Roadways (including sidewalks, streetscape, water, sewer or storm drainage facilities and other improvements), (iii) certain improvements within the Amenity Area, and (iv) certain additional recreational amenities and facilities, for the use and enjoyment of the Owners who are entitled to the use of such Common Areas as provided in this Declaration. Notwithstanding the recordation of any Plat or any other action by Declarant or the Association, all Common Areas shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public (with the exception of the Roadways, which may eventually be accepted for public dedication and maintenance by the North Carolina Department of Transportation or other governmental entity, and with the exception of the rights of "Licensees," as defined and described in Article III, Section 4, below).

Section 2. Owners' Rights to Use and Enjoy Common Areas. Each Owner shall have the non-exclusive easement and right to use and enjoy the Common Areas, and such right shall be appurtenant to and conveyed with title to such Owner's Lot, subject to the following:

(a) the right of the Association and the Board to promulgate and enforce reasonable regulations governing the use of the Common Areas to insure the availability of the right to use the Common Areas to the Owners;

(b) the right of the Association to suspend the voting rights of an Owner in the Association and the right of the Association to suspend the right to use certain or all of the Common Areas by an Owner for any period during which any assessment or charge against said Owner's Lot remains unpaid, and for the maximum period allowed by applicable law for any infraction of its Rules and Regulations;

(c) the right of the Declarant or the Association to grant or reserve utility, drainage and other easements across the Common Areas; and

(d) the right of the Association, subject to the provisions of the Act (Section 3-112), to encumber or convey all or any part of the Common Areas.

(e) any and all other applicable provisions of this Declaration, including, without limitation, the provisions of Article VII, Section 16 and of Section 4 below.

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his or her right of enjoyment to the Common Areas and facilities located thereon to the members of his or her family, his or her guests, invitees, or his or her tenants.

Section 4. Use of Amenity Areas by Licensees. The Association shall have the right, from time to time, to allow individuals not owning a Lot or any other part of the Property (each, a "Licensee;" collectively, "Licensees") to use all or a certain portion of the Amenity Areas upon

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terms and conditions acceptable to the Association and set forth in a written agreement between the Association and each Licensee (each, a "License Agreement"). Each License Agreement, among other things, may include the following provisions:

(a) Upon execution of a License Agreement, each Licensee may be required to pay to the Association an amount determined by the Association in its sole discretion ("the License Fee") as consideration (in addition to the "User Fee" defined in Section 4(b) below) for the Association's agreement to enter into the License Agreement;

(b) In addition to the License Fee, each Licensee may be required to pay to the Association an amount to be collected no less often than annually (a "User Fee") in such amount as is determined by the Association from time to time as consideration for the ongoing use of the Amenity Areas (or such portion thereof with respect to which license has been granted);

(c) The License Agreement may provide for termination at will by the Association or the Licensee, and may provide that, upon any such termination, any License Fee paid by such Licensee, as well as a pro-rated portion of the User Fee, if applicable, shall be refunded to the Licensee, less any costs owed by such Licensee to the Association; and

(d) The License Agreement may provide for termination for cause by the Association, and may provide for forfeiture of the License Fee and any prepaid User Fee in the event of any such termination.

Section 5. Bodies of Water. By acceptance of a deed to a Lot, each Owner acknowledges that the water levels of all water bodies within the Property may vary (including, without limitation, water levels within the Stormwater Facilities). There is no guarantee by the Declarant or the Association that water levels will be constant or aesthetically pleasing at any particular time. In fact, water levels may be non-existent from time to time or may significantly vary from one water body to the other within the Property. Declarant or the Association will have no duty to maintain the water levels or to insure that they will be constant or aesthetically pleasing at any particular time.

Section 6. Conveyance of Title to the Association. Declarant covenants, for itself, its successors and assigns, that it will convey Common Area to the Association as required by Legal Requirements or the Declaration. Provided, however, specific performance shall be the only remedy available for any failure of Declarant to do so, and the Association shall accept conveyance of Common Area from the Declarant at any time. So long as Declarant owns any Lot or other portion of the Property or has any obligation to applicable governmental authorities respecting the Property, Declarant shall have an easement in, over, across, under and through the Common Area for the purpose of constructing or maintaining any improvements on the Common Area or for the benefit of the Property as it deems necessary or advisable, provided that any such improvements must comply with Legal Requirements. Except as otherwise stated herein, all conveyances by Declarant to the Association of real property may be by special warranty deed and shall be free and clear of all encumbrances and liens, except for all Legal Requirements, rights of the Declarant provided for in the Declaration or other governing documents, applicable

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rights of way and easements in instruments or plats recorded in the Registry, agreements affecting the Common Area that have been executed as allowed by the Declaration, applicable ad valorem property taxes for years subsequent to the year in which the conveyance occurs, the Declaration, conservation easements granted to any Person or governmental entity, and other exceptions to title that existed prior to the time Declarant acquired title to such Common Area.

Any improvements constructed or placed on, in, under, or over the Common Area by Declarant and intended for the common use and enjoyment of some or all of the Owners, shall become the property of the Association upon the conveyance of such Common Area to the Association or, as determined by the Declarant, upon the later completion of such improvements. Provided, however, and notwithstanding the foregoing sentence, the following types of improvements constructed or placed on, in, under, or over the Common Area shall not become the property of the Association upon conveyance of the Common Area to the Association: (i) improvements (for example, pipes for transmission of water or sanitary sewer) owned by any governmental entity or with respect to which dedication to public use is accepted by any governmental entity, regardless of when such ownership or dedication occurs, or (ii) improvements (for example, pipes, wires, and other facilities for transmission of electricity, telephone, natural gas, cable television, or internet service) owned by a utility provider, regardless of when such ownership occurs, or (iii) improvements (for example, a stormwater drainage pipe) that are located in any easement reserved by Declarant or allowed to be established by Declarant under the Declaration and which serve or benefit other real property that is not part of the Property and which improvements either are owned by a property owners association other than the Association or such property owners association has maintenance obligations with respect thereto.

All conveyances of Common Area to the Association are subject to the right and easement of Declarant and its successors and assigns to construct, install, and maintain such improvements on, in, over, or under such Common Area as Declarant determines are necessary or desirable for the development of the Properties or in the exercise of any other rights or easements of the Declarant provided for in the Declaration. Declarant may convey or transfer to the Association real property, personal property and rights and easements in Common Area by written instrument, without warranty, and in an "as is, where is" condition, or may convey or transfer the same to the Association in any other manner determined by Declarant.

Section 7. Rules and Regulations. The Association shall have the right to adopt, publish and enforce Rules and Regulations governing the Property, the use and enjoyment of the Common Area, and any facilities thereon, and the personal conduct thereon of the Owners, their guests, invitees, members of their families or households and tenants. Such Rules and Regulations shall be reasonable, shall not discriminate against Declarant (or have an adverse impact on Declarant or upon the sale of Lots or the construction of improvements thereon), and must be consistent with this Declaration, the Articles of Incorporation and the Bylaws. Rules and Regulations and any changes thereto shall be effective upon Board approval and shall be mailed to each Owner addressed to the Owner's address last appearing in the books of the Association or posted in a conspicuous place within the Property. It shall be an affirmative obligation of each Owner to keep apprised of the Rules and Regulations governing the Property.

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Section 8. Declarant's Right to Change Development Plans. With the approval of the Town of Cary, Declarant shall have the right, without consent or approval of the Owners, to create Lots and Dwelling Units, add Common Area, change Dwelling Unit types and reallocate Dwelling Units within the Property. In addition, Declarant shall have the right to change Common Area and Lots designations, the boundary lines of Common Area and Lots and/or the location of easements shown on any Plat by recording a new Plat showing such changes, which Plat shall be executed by the Declarant and the Owner of the Common Area or Lot so modified. To the fullest extent permitted by North Carolina law, each Owner covenants by acceptance of the deed or instrument by which its Lot is conveyed not to protest, challenge or otherwise object to (i) changes in uses or density of the Property or Additional Property, (ii) changes to boundary lines of Common Area and Lots and/or the location of easements shown on any Plat, or (iii) changes in the site plan and other development documents filed with the Town of Cary in connection with the Property or Additional Property.

Section 9. Compliance with Declaration and Other Documents. Each Owner, resident, tenant or guest of a Lot shall comply with the provisions of this Declaration, the Bylaws, Rules and Regulations duly adopted by the Association, decisions and resolutions of the Association and its duly authorized representatives, all as may be amended from time to time, and failure to comply with any such provisions, decisions or resolutions, shall be grounds for an action to recover sums due for damages or for injunctive relief.

Section 10. Resolution of Conflicts Between Documents. Each Owner covenants and agrees that the administration of the Property shall be in accordance with the provisions of this Declaration, the Articles of Incorporation, the Bylaws and Rules and Regulations duly adopted by the Association. If there are any matters of conflict or inconsistencies in the Bylaws, Articles and this Declaration, then the provisions of this Declaration shall prevail. In the event that anything shown on a Map for all or any portion of the Property is in any way inconsistent with provisions of this Declaration, then the provisions of this Declaration shall prevail unless otherwise required by law. If a dispute arises among Owners in regard to the administration of the Property, then the provisions of this Declaration shall prevail.

ARTICLE IV

THE ASSOCIATION

Section 1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and shall be governed by the Bylaws. In addition, as long as Declarant owns any part of the Property, Declarant shall be a Member of the Association.

Section 2. Classes of Voting Members. The Association shall have two (2) classes of voting membership:

(a) Class I. The Class I Association Members shall be all Association Members with the exception of Declarant. Class I Association Members shall be entitled

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to one (1) vote for each Lot owned by such Association Member. When more than one Person owns an interest (other than a leasehold or security interest) in any Lot, all such Persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) Class II. The Class II Association Member shall be Declarant. The Class II Association Member shall be entitled to ten (10) votes for each Lot owned by Declarant.

Section 3. Declarant Control Period; Relinquishment of Control. Notwithstanding any other provision of this Declaration or the Bylaws, until the expiration of the Declarant Control Period, Declarant may, in its discretion, appoint and remove all of the directors and officers of the Association. Notwithstanding anything contained herein to the contrary, the Declarant Control Period shall expire and the Class II Association Membership shall cease and be converted to the Class I Association Membership upon the earliest to occur of (a) the date on which Declarant no longer owns any part of the Property; (b) the date Declarant shall elect, in its sole discretion, that the Class II membership cease and be converted to the Class I membership (which election may be made, if at all, upon Declarant giving written notice of its election to the Board); or (c) December 31, 2027. The earliest to occur of (a), (b) or (c) above shall herein be referred to as the "Turnover Date." After the Turnover Date and for so long as Declarant owns any part of the Property, Declarant shall be a Class I Association Member.

Section 4. Availability of Documents. The Association shall maintain current copies of the Declaration, the Bylaws and other rules concerning the Project as well as its own books, records, and financial statements available for inspection by all Owners, Mortgagees and insurers and guarantors of Mortgages that are secured by Lots. All such documents shall be available during normal business hours upon reasonable notice and stated purpose. In addition, any Mortgagee may, at its own expense, have an audited statement prepared with respect to the finances of the Association.

Section 5. Management Contracts. The Association is authorized and empowered to engage the services of any person, firm or corporation to act as managing agent of the Association at a compensation level to be established by the Board and to perform all of the powers and duties of the Association. The managing agent may be an affiliate of Declarant. Any such contract shall be terminable by the Association with or without cause upon thirty (30) days prior written notice to the manager without payment of a termination fee.

Section 6. Maintenance. Prior to their acceptance for public maintenance, the Roadways shall be maintained by the Declarant, provided that the Association, in its sole discretion, has the right to reimburse the Declarant for maintenance costs until the Roadways are accepted for maintenance by the North Carolina Department of Transportation or other governmental entity or until the Roadways are accepted for private maintenance by the Association. Such maintenance shall include repair and reconstruction, when necessary. Maintenance of the Roadways shall conform to the standard of maintenance (if one is ascertainable) which would be required by the North Carolina Department of Transportation or other governmental entity before it would accept such Roadways for maintenance.

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The Common Areas and the Maintenance Areas, together with all utilities, easements and amenities located therein and not otherwise maintained by public entities or utilities or any other party as provided herein, shall be maintained by the Association as more particularly described below:

(a) Maintenance of the entryways to the Project shall include maintenance, repair and reconstruction, when necessary, of the entrance monuments, signage, irrigation, landscaping, planters and lighting located thereon and providing and paying for landscaping, utility charges for irrigation and lighting of the entrance monuments and signage located thereon.

(b) The Common Areas and Maintenance Areas, including, without limitation, the Amenity Area, and the landscaping thereon (if any), shall be clean and free from debris and maintained in an orderly condition, including any removal and replacement of any landscaping, utilities, or improvements located thereon and in accordance with and subject to the requirement of any applicable governmental authority.

(c) Maintenance of any improvement within the Amenity Area (including, without limitation, any fencing, parking area, tot lot, gazebo or playground equipment or other recreational amenity or facility located therein) shall include, but not be limited to, any and all maintenance (including, where necessary, repair and/or reconstruction), landscaping and payment of all utility charges related to any such improvement.

(d) To the extent not maintained by the North Carolina Department of Transportation or other governmental entity, as the case may be, the Association shall maintain or cause to be maintained the swales and medians and associated landscaping and related improvements along and within the Roadways fronting the Common Area (provided that any swales and medians and associated landscaping and related improvements fronting any Lot shall be maintained by the Owner's of such Lot, regardless of whether such swale, median or associated landscaping is located in any right of way or publicly dedicated area).

(e) Maintenance of the Parking Area(s) (if any) shall include repair, maintenance and reconstruction, when necessary, of the pavement and payment of the costs of lighting.

Section 7. Reserve Funds. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of all or a portion of the Common Areas or Maintenance Areas and in order to fund unanticipated expenses of the Association or to acquire equipment or services deemed necessary or desirable by the Board of Directors. Such reserve fund shall be collected and maintained out of the Annual Assessments as hereinafter defined (except in years prior to the Turnover Date in which Declarant elects in lieu of payment of Annual Assessments to fund the deficit). Assessments collected as reserves shall not be considered to be advance payments of Annual Assessments. This Section does not limit the Association's ability to collect any Supplemental Assessment, Special Assessment or Special Individual Assessment as provided for in Section 5 and Section 6 of Article V herein. *See also Article XII, Section 3.*

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Section 8. Parking Area. Declarant may (but is not obligated to) construct, and the Association shall maintain, repair and, if destroyed, replace, as a common expense of the Association, paved Parking Areas located on the Amenity Area and other Common Areas. The Parking Areas shall be constructed and maintained in order to provide parking for the Owners, and may be used by Declarant and its assigns, the Owners, their families, guests and invitees, and the Licensees (if any) in connection with their use of the Amenity Area; provided, however, overnight parking and overnight storage of any kind shall not be permitted in the Parking Areas without the consent of the Board of Directors.

Section 9. Liability Limitations. Neither Declarant, nor any Association Member, nor the Board, nor any officers, directors, volunteers, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Association Member, whether or not such other Association Member was acting on behalf of the Association or otherwise. Neither Declarant nor the Association, nor their directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or association making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof. The Association shall, to the extent permitted by applicable law, indemnify and defend any and all persons who may serve or whom have served at any time as directors or officers of the Association from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

ARTICLE V

COVENANT FOR ANNUAL AND SPECIAL ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance document, is deemed to covenant and agrees to pay to the Association Annual Assessments, Supplemental Annual Assessments and Special Assessments, Special Individual Assessments (collectively, the "Assessments"), established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs, and reasonable attorneys' fees, shall be a charge and a continuing lien upon the Lot, as the case may be, against which each such assessment or charge is made. Each such assessment or charge, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner, at the time when the assessment fell due, of the Lot, as the case may be, against which such assessment or charge is made. The personal obligation for delinquent assessments or charges shall not pass to an Owner's successors in title unless expressly assumed by them, provided such assessments or charges, together with interest, costs, and reasonable attorneys' fees, shall, as set forth above, be a continuing lien upon the Lot, as the case may be, against which such assessments or charges are made.

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Section 2. Purpose of Annual Assessments. The assessments to be levied annually by the Association ("Annual Assessments") shall be used as follows:

- (a) to operate, repair, maintain, reconstruct (when necessary) and keep clean and free from debris the Common Areas (including without limitation the Amenity Area and the Stormwater Facilities) and (to the extent provided herein) the Maintenance Areas and any improvements (including landscaping) located thereon, including any necessary removal or replacement of landscaping, in accordance with applicable Legal Requirements (and in particular as to the Stormwater Facilities in accordance with all applicable Stormwater Facility Agreements and Stormwater Maintenance Manuals);
- (b) to maintain and repair the Roadways to the standards of the maintenance (if one is ascertainable) which would be required by the North Carolina Department of Transportation or other governmental entity before it would accept such Roadways for maintenance;
- (c) to maintain, operate, repair and reconstruct, when necessary, the entryways to the Project, including the entrance monuments, signage, irrigation, planters, landscaping and lighting located thereon;
- (d) to maintain and repair the swales and medians, landscaping and related improvements along and within the Roadways fronting any Common Areas to the extent not maintained by the North Carolina Department of Transportation or other governmental entity, as the case may (it being understood that any swales and medians and associated landscaping and related improvements fronting or located on any Lot and not in the Common Area shall be maintained by the Owner of such Lot, regardless of whether such swale, median or associated landscaping lies in any right of way or other publicly dedicated area);
- (e) to pay any costs associated with the lease and operation of the Street Lights, including, but not limited to, any monthly lease payments and utility costs;
- (f) to pay any costs associated with the maintenance, repair and replacement of the Street Identification Signs;
- (g) to pay all ad valorem taxes levied against the Common Areas and any other property owned by the Association;
- (h) to pay the premiums on all insurance carried by the Association pursuant hereto or pursuant to the Bylaws;
- (i) to pay all legal, accounting, management, and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws;
- (j) to pay all expenses incurred by the Association for all other purposes required or authorized under the Act, the Articles, the Bylaws and in this Declaration; and

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(k) to maintain contingency reserves for the purposes set forth in Article IV hereof in amounts as determined by the Board of Directors.

The expenses of the Association for the foregoing are sometimes referred to herein as "common expenses."

Section 3. Payment of Annual Assessments; Due Dates. Each Owner of a Lot shall pay to the Association Annual Assessments as hereinafter set forth.

Annual Assessments provided for herein shall commence as to all Lots shown on a Plat of any Phase of the Property as of the date of the conveyance of the first Lot in such Phase by Declarant to an Owner (other than Declarant) of such Lot. The Annual Assessment for the first year in which a Lot is subject thereto shall be prorated based upon the number of days remaining in the applicable billing period from the date of such conveyance. The Annual Assessment amount for each calendar year shall be in an amount as set by the Board of Directors, in accordance with the terms of this Article V. Annual Assessments shall be due and payable in advance on a yearly basis (or such other basis as is determined by the Board in its discretion) commencing on January 1 of each calendar year. The Board of Directors shall fix the amount of the Annual Assessment as to each Lot for any calendar year at least thirty (30) days prior to January 1 of such calendar year, and the Association shall send written notice of the amount of the Annual Assessment, as well as the amount of the payment due, to each Owner on or before January 5 of such calendar year. To the extent required by North Carolina General Statutes 47F-3-103(c) or other applicable law, such notice shall include notice of a meeting of the Members to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. If such a meeting is required by N.C. General Statutes 47F-3-103(c), or other applicable law, the Board of Directors shall set a date for a meeting of the Members to consider ratification of the budget to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. If such meeting is required as set forth above, there shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at such meeting Members exercising all of the votes in the Association reject the budget. The failure of the Association to send, or of a Member to receive, such notice shall not relieve any Member of the obligation to pay Annual Assessments. Notwithstanding the foregoing, for calendar years beginning prior to the Turnover Date, in lieu of payment of Annual Assessments, Declarant may elect to pay for each such calendar year that portion of the annual expenses of the Association (excluding any reserves) which exceeds the total amount of the Annual Assessments paid by the Owners other than Declarant.

The maximum initial Annual Assessment shall be \$1,500.00 per Lot.

Section 4. Conveyance Pro-rations; Reduced Annual Assessments.

(a) With respect to any Lot conveyed by Declarant, the purchaser of such Lot shall pay to the Association at closing the amount of the Annual Assessment for the installment period in which the closing occurs on such Lot prorated based upon the number of days remaining in such installment period. With respect to any Lot conveyed by any Owner other than Declarant, the amount of the Annual Assessment applicable to

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such Lot for the installment period in which such closing occurs shall be prorated between the buyer and seller thereof as of the date of closing of such conveyance.

(b) Declarant shall have the authority to reduce the Annual Assessment on any Lot on which no structure has been completed (i.e., no Certificate of Occupancy has been issued).

Section 5. Special Assessments. In addition to the Annual Assessment authorized above, the Association may levy, in any assessment year, a special assessment ("Special Assessment") for one or more of the following purposes: (i) paying the cost of the construction of any Common Area and/or Maintenance Area improvements which are not originally constructed by Declarant; or (ii) paying the cost of the reconstruction, repair or replacement of the Common Areas and/or Maintenance Areas, including any improvements located thereon, and including, without limitation, the Amenity Area; or (iii) paying the cost of preventative actions to protect the Property or any improvements located thereon, and to further reconstruct, repair or replace any portion of the Property or such improvements following an emergency, including but not limited to, floods, hurricanes, tornadoes, fires, acts of God or other naturally occurring phenomena; or (iv) paying the costs to acquire land and/or improvements from Declarant to be used as Common Area; or (v) any other purpose as may be permitted by law in connection with the payment of a common expense. Provided, however, (a) Declarant shall not be obligated to pay any Special Assessments on Lots owned by Declarant except with Declarant's prior written approval, and (b) any Special Assessment must be approved by Declarant (so long as Declarant owns any part of the Property).

Section 6. Special Individual Assessments. In addition to the Annual Assessments and Special Assessments authorized above, the Board of Directors shall have the power to levy a special assessment applicable to any particular Owner ("Special Individual Assessment") (i) for the purpose of paying for the cost of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas and/or Maintenance Areas, including, without limitation, the Amenity Area and any improvements located thereon, whether occasioned by any act or omission of such Owner(s), members of such Owner's family or such Owner's agents, guests, employees, tenants or invitees and not the result of ordinary wear and tear; (ii) for payment of fines, penalties or other charges imposed against any particular Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws or any rules or regulations promulgated by the Association or the Declarant pursuant to this Declaration or the Bylaws; (iii) payment for costs related to the abatement of a nuisance; or (iv) any other purpose as may be permitted by law in connection with the payment of a common expense. Provided, however, Declarant shall not be obligated to pay any Special Individual Assessment except with Declarant's prior written approval. The due date of any Special Individual Assessment levied pursuant to this Section 6 shall be fixed in the Board of Directors resolution authorizing such Special Individual Assessment. Upon the establishment of a Special Individual Assessment, the Board shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner(s) at least thirty (30) days prior to the date such Special Individual Assessment is due.

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Section 7. Collection Agent. At the option of the Board of Directors, any person or entity designated by the Board of Directors may act as collection agent for any and all assessments imposed by the Association and/or the Board against the Owners.

Section 8. Assessments Against Lots Owned by Declarant. Anything to the contrary set forth in this Declaration notwithstanding, the Annual Assessments on each Lot owned by Declarant shall be an amount equal to ten percent (10%) of the amount of the Annual Assessments on each Lot owned by an Owner other than Declarant. In addition, Declarant shall be entitled to credit against any Assessments on Lots owned by Declarant any and all amounts which Declarant has paid directly for common expenses, or has paid or contributed to the Association for the Association's payment of common expenses.

Until the Turnover Date, the Declarant may elect on an annual basis, but shall not be obligated, to reduce the Annual Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant pursuant to the immediately preceding paragraph), which may be either a contribution, an advance against future assessments due from the Declarant (if Declarant consents in writing to any such assessments), or a loan (as described below), in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Association budget. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years.

It is anticipated that until Declarant has sold a certain number of Lots (which number has not yet been determined, and which number is referred to herein as the "Break-even Number"), the Annual Assessments collected by the Association will not be sufficient to pay all common expenses on a current basis, but that the anticipated Annual Assessments collected after the Break-even Number of Lots has been sold will meet or exceed common expenses. To fund this shortfall, Declarant reserves the right, but is not obligated, to make a loan (the "Assessment Loan") to the Association, as provided below, until cash flow from the Annual Assessments is sufficient to pay common expenses. If Declarant elects to make the Assessment Loan, then Declarant shall advance to the Association annually or quarterly at its election the amount by which the common expenses exceed the Annual Assessments collected for such year. The Association shall have the affirmative obligation to repay the Assessment Loan to the Declarant in accordance with the terms hereof, together with interest thereon at the short term Applicable Federal Rate ("AFR"), as published by the Internal Revenue Service, and adjusted each month to reflect the AFR for such month. The Association shall use proceeds advanced to the Association only to pay the above described shortfall in common expenses. The Association shall repay the Assessment Loan to Declarant in monthly installments or as otherwise determined by Declarant commencing at such time as the sales of Lots reach the Break-even Number, until the balance of the Assessment Loan has been repaid to Declarant in accordance with its terms; provided, however, an Assessment Loan shall in no event be repaid to Declarant later than the date that is ten (10) years from the date sales of Lots reach the Break-even Number. Each Owner of a Lot, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, is hereby deemed to covenant and agree (and such covenant further shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the Lot), that such an Assessment Loan is reasonable and was made by Declarant and accepted by the Association in good faith and at arm's length.

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Section 9. Operating Capital Fund. At the time of closing of the initial sale of each Lot by Declarant to a third party purchaser, an operating capital payment shall be collected from the purchaser of such Lot (or, if Declarant so elects, from Declarant) and transferred to the Association to be used as a operating capital fund, which operating capital payment shall be in an amount equal to \$300.00. The operating capital fund shall be used by Association for whatever purposes it deems necessary or desirable. Amounts paid into the fund shall not be considered advance payment of regular assessments.

ARTICLE VI

GENERAL ASSESSMENT PROVISIONS

Section 1. Certificate Regarding Assessments. The Association or its agents shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association and its agents as of the date of its issuance.

Section 2. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment (or installment thereof) not paid by its due date as set forth herein shall bear interest from such due date at the rate of eighteen percent (18%) per annum or the highest rate then permitted by law, whichever is less. In addition to such interest charge, the delinquent Owner shall also pay such late charge as may have been theretofore established by the Board of Directors to defray the costs arising because of late payment. The Association may bring an action at law against the delinquent Owner (or foreclose the lien against the applicable portion of the Property), and interest, late payment charges, costs and reasonable attorney's fees related to such action or foreclosure shall be added to the amount of such assessment and assessment lien. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of his or her property or the Common Areas or otherwise.

Section 3. Subordination of the Lien to Mortgages. The lien of the assessments provided for in this Declaration shall be subordinate to the lien of any first Mortgage on a Lot. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to a mortgage foreclosure under any first Mortgage on a Lot, or any proceeding in lieu thereof, however, shall extinguish the lien (but not the personal obligation of the mortgagor or any prior Owner) of such assessments as to payments which became due prior to such sale or transfer; provided, however, that the Board of Directors may in its sole discretion determine such unpaid assessments to be an Annual, Special or Special Individual Assessment (as the case may be), as applicable, collectable pro rata from all Owners, including the foreclosure sale purchaser. Such pro rata portions are payable by all Owners notwithstanding the fact that such pro rata portions may cause the Annual Assessment to be in excess of the Maximum Annual Assessment permitted hereunder. No sale or transfer shall relieve the purchaser of such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any first Mortgage on a Lot.

ARTICLE VII

RESTRICTIONS

Section 1. Residential Restrictions. Each Lot shall be used exclusively for single-family, non-transient residential purposes; provided, however, Declarant shall have the right to use the Lots designated from time to time by Declarant for the purpose of construction and operation of construction offices and trailers, community and marketing signage, storage areas, parking areas and sales/marketing offices and trailers (and for related uses) for the Project. No trade, business or business activity of any kind shall be conducted upon a Lot or any part thereof except by Declarant as described hereinabove or except with the written approval of the Board. Provided, however, the Board may permit a business or business activity to be conducted on a Lot so long as such business, in the sole discretion of the Board, does not otherwise violate the provisions of this Declaration; does not create a disturbance; does not unduly increase traffic flow or parking congestion on the Property or in the Project; is not a mail order business; is incidental to the Lot's primary residential use; and is in compliance with all applicable laws. Furthermore, Owners who pursue such incidental occupational use of their Lots shall have no employees, customers or clients at the Lot and shall obtain prior approval from all authorities having jurisdiction over the use of the Lot and the Dwelling Unit located thereon. The Board may issue rules regarding permitted business activities. Leasing of a residence on a Lot shall be considered a business or business activity and shall require Board approval.

a. Except those to be utilized by Declarant as described hereinabove, no structure shall be erected, placed, altered, used or permitted to remain on any Lot other than one detached single-family private Dwelling Unit and only such other accessory structures as are approved in advance in writing by the Architectural Control Committee pursuant to the Guidelines. Only Dwelling Units on the Lots may be occupied for use as a residence. Dwelling Units shall be occupied by no more persons than the maximum permitted by law. No Lot and no Improvements may be used for hotel or other transient residential purposes. If approved by the Board, each lease relating to any Lot or any Improvements thereon (or any part of either thereof) must be for a term of at least six (6) months, must be in writing, must provide that the tenant is obligated to observe and perform all of the terms and provisions hereof applicable to such Lot and/or Improvements, and must provide that the tenant or Owner is obligated to contract for and obtain weekly yard service for such Lot prior to or incident to the commencement of the lease term. In the event an Owner shall rent or lease his or her Lot or any Improvements thereon (or any part of either thereof), such Owner shall immediately give to the Association in writing: (i) the name of the tenant and the Lot rented or leased; (ii) the current address of such Owner; (iii) a true and complete copy of the lease or rental agreement; and (iv) the certification of the Owner that the tenant has been given a copy of this Declaration, any applicable amendments, and the Bylaws and that such tenant has been advised of any obligations he may have thereunder as a tenant. In no event shall any lease or rental agreement release or relieve an Owner from the obligation to pay regular Assessments to the Association, regardless of whether the obligation to pay Assessments has been assumed by the tenant in such lease or rental agreement.

Section 2. Tennis and Other Sports Courts; Pools (above ground) and Hot Tubs. Tennis courts and other sports courts, pools (above and below ground) and hot tubs may not be constructed or installed on any Lot without the approval of the Architectural Control Committee.

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Section 3. HVAC Equipment. No air conditioning or heating equipment or apparatus shall be installed on the ground in front of, or attached to any front wall of, any Dwelling Unit on a Lot. Additionally, air conditioning and heating equipment and apparatus shall be screened from view from Roadways by landscape improvements, as more particularly provided in the Guidelines. Installation of air conditioning and heating equipment and apparatus in windows shall be prohibited.

Section 4. Exterior Lighting. Exterior lighting on Lots shall be subject to the applicable requirements and limitations in the Guidelines and applicable laws. Night lighting of tennis courts and other recreational facilities on Lots is not permitted unless approved in writing by the Architectural Control Committee and in accordance with applicable law.

Section 5. Fences and Walls. In addition to the restrictions contained elsewhere in this Declaration and except as expressly provided below, no fence or wall (including densely planted hedges, rows or similar landscape barriers) (i) shall be erected, placed, maintained or altered on any Lot nearer to any Roadway fronting such Lot than the rear building corner of the main Dwelling Unit constructed on such Lot (unless otherwise approved by the Architectural Control Committee); and (ii) shall not exceed six (6) feet in height, except fences enclosing approved tennis courts may be up to ten (10) feet in height if located at least twenty-five (25) feet from all Lot boundary lines. Provided, however, and notwithstanding the foregoing, in order to accentuate certain architectural styles within the Project, Declarant and/or the Architectural Control Committee, in their sole and absolute discretion, may allow the construction and use of fencing along or near the front, side and/or rear boundary lines of certain designated Lots within the Project. All fences and walls shall be maintained in a structurally sound and attractive manner. No fence or wall shall be erected on any Lot until the Architectural Control Committee has given its prior written approval of the color, size, design, materials and location for such fence or wall as the same may be approved on a case by case basis separate and apart from any applicable provisions of the Guidelines.

Section 6. Mail Boxes; House Numbers. Declarant shall install, at Lot Owner's expense, and each Lot Owner shall maintain, at Lot Owner's expense, a standard mailbox for such Owner's use on such Owner's Lot. No other mailbox shall be erected or maintained on any Lot. The location of the mailbox on a Lot must be approved by the Architectural Control Committee. House numbers may be displayed on the Dwelling Unit and/or mailbox only as approved by the Architectural Control Committee. If a mailbox is damaged or destroyed, it must be replaced by the Owner at the Owner's cost, and the replacement mailbox must be identical to the original mailbox.

Section 7. Animals. No animals, wildlife, livestock, reptiles or poultry shall be raised, bred or kept on any portion of the Property except that common domesticated animals may be kept as household pets, but not for any commercial purposes, provided that they do not create a nuisance (in the judgment of the Board) such as, but without limitation, by noise, odor, damage or destruction of property or refuse. Under no circumstances shall any animals which raise the insurance premium or are deemed to be "dangerous animal" pursuant to the Association's policy of liability insurance be allowed to be raised, bred, or kept on any portion of the Property. Any excrement deposited by an animal on any portion of the Property shall be promptly removed and appropriately disposed of by the owner of such animal. All animals other

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than domestic cats shall at all times whenever they are outside of a Dwelling Unit be on a leash or otherwise confined or controlled in a manner acceptable to the Board. The Association may restrict the walking of pets to certain areas. Commercial activity involving pets, including, without limitation, boarding, breeding, grooming or training is not allowed. The ability to keep a pet is a privilege, not a right. The number of household pets generally considered to be outdoor pets, such as dogs, cats, et cetera, shall not exceed a total of two (2) in number except for newborn offspring of such household pets which are under nine (9) months of age. If, in the opinion of the Board, any pet becomes a source of unreasonable annoyance to others, or the owner of the pet fails or refuses to comply with these restrictions, the owner, upon written notice, may be required to remove the pet from the Project. Pets other than domestic cats may not be left unattended or leashed in yards or garages or on porches or lanais. Pursuant to the Rules and Regulations, the Board may further regulate pets, including but not limited to number and type of pets. Animal control authorities shall be permitted to enter the Project and the Property to patrol and remove pets and wild animals. All pets shall be registered, licensed and inoculated as required by law. No fenced dog enclosure or other structure for pets may be constructed or maintained on any Lot unless the same has been approved in writing by the Architectural Control Committee. Except for domesticated cats, any time that an animal is outside, it must be on a leash and accompanied by the Owner, or some other person. Except for domesticated cats, animals shall not be left unattended outside even when chained or contained inside a fence, except as may be permitted in writing by the Architectural Control Committee. At no time shall animals be allowed to be chained or tied in the Common Area. Each Owner shall also be responsible for cleaning up the feces of its animals both on its Lot and on the Property.

Section 8. Signs. No Owner shall place on or about any window or aperture any metallic foil or other coating, substance or material which similarly acts as a reflector of light nor shall an Owner place newspapers or bed sheets in any window or aperture. Except for political signs and flags of the United States or State of North Carolina, which signs and flags shall be permitted in accordance with Planned Community Act, no sign, banner, commercial flag, billboard or advertisement of any kind, including without limitation, informational signs, "for sale" or "for rent" signs and those of contractors and subcontractors, shall be displayed on any Lot except for sign(s), banners(s), flags(s), and billboard(s) approved in advance by the Board of Directors, and by Declarant as long as Declarant owns any Lot or any portion of the Property. Declarant shall be entitled to erect and maintain signs and billboards advertising the Property, the Project or portions of either, or for any other purpose, on any portion of the Property owned by Declarant or in the Common Areas or Maintenance Areas. If permission is granted to any Owner to erect a sign on a Lot, the Board of Directors (and Declarant, as long as Declarant owns any Lot or any portion of the Property) reserve the right to restrict the size, shape, color, lettering, height, material and location of the sign, or in the alternative, provide the Owner with a sign to be used for such purposes. No sign shall be nailed or otherwise attached to trees.

Section 9. Temporary Structures; Structure Materials. No residence or building of a temporary nature, including a construction trailer, shall be erected or allowed to remain on any Lot, and no metal, fiberglass, plastic or canvas tent, barn, carport, garage, utility building, storage building or other metal, fiberglass, plastic, wood or canvas structure shall be erected on any Lot or attached to any residence. Provided, however, nothing herein shall prohibit Declarant from erecting or moving temporary buildings and/or trailers onto Lots owned by Declarant to be used for storage, or for construction or sales offices.

Section 10. Sight Line Limitations. To the extent that governmental requirements shall not impose a stricter standard, no fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above Roadways shall be placed or permitted to remain on any corner Lot within the triangular areas shown on the Plat as "Sight Triangles." The same sight line limitations shall apply on any Lot within the triangular area formed by (i) the line that runs from the point of intersection of (a) the edge of a Roadway's pavement and (b) the edge of the pavement of the driveway on such Lot for a distance of ten (10) feet along such Roadway pavement away from such driveway pavement, (ii) the line that runs from said point of intersection for a distance of ten (10) feet along such driveway pavement away from such Roadway pavement, and (iii) the straight line that connects the ending points of the lines described in the foregoing clauses (i) and (ii). Mailbox placement shall be exempt from these restrictions if permitted by the Legal Requirements. No tree shall be permitted to remain within such triangular areas unless the foliage line is maintained at an appropriate height to prevent obstruction of sight lines.

Section 11. Utilities. All utilities and utility connections shall be located underground, including electrical, telephone and cable television lines. Transformers, electric, gas or other meters of any type, or other apparatus shall be adequately screened as required by the Architectural Control Committee in accordance with the provisions of this Declaration.

Section 12. Sediment Control. Sufficient sediment control measures, including, but not limited to, installation and maintenance of silt fences, straw bale fences, storm water inlet protection and temporary seeding, to the extent deemed reasonably necessary by Declarant or the Architectural Control Committee and to the extent mandated by applicable Legal Requirements, shall be taken by the Owner or Owner's builder to ensure that all sediment resulting from any land disturbance or construction operation is retained on the Lot in question. All sediment control measures must be maintained until such Lot has been permanently stabilized with respect to soil erosion.

Section 13. Building Envelope. No building or other Improvement on any Lot (including any stoops or porches, patios, decks, terraces, etc.) shall be erected or permitted to remain outside of the "Building Envelope" for that particular Lot as established by the Architectural Control Committee (as to each Lot, the "Building Envelope"). Provided, however, and notwithstanding the foregoing to the contrary the Building Envelope shall otherwise comply with all applicable laws. The Architectural Control Committee shall have the right in its sole discretion to make exceptions to any Building Envelope to recognize any special topography, vegetation, Lot shape or dimension, or other site-related conditions. In the event any zoning or subdivision ordinance, floodway regulation or other ordinance, law or regulation applicable to a Lot shall prescribe greater setbacks, then all buildings erected during the pendency of such requirements shall conform thereto; provided that the Architectural Control Committee may impose stricter requirements from time to time than that permitted by such applicable zoning or subdivision ordinance, floodway regulation or other ordinance, law or regulation.

Section 14. Waste. (i) No Lot shall be used or maintained as a dumping ground for rubbish, trash, new or used lumber or weed, metal scrap, or garbage, except that such material may be kept on the Lot or in areas of the Property designated for this purpose by the Declarant or by the Board of Directors, provided that these materials are kept in a clean and sanitary

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condition. During construction of Improvements on a Lot, all rubbish and debris shall be stored and disposed of in accordance with the rules established by the Architectural Control Committee. Job site debris shall be removed from all Lots at least weekly. (ii) Owners shall place containers for collection and shall not dump or use any portion of the Lot for the storage of rubbish, trash, or garbage other than in such containers. Containers shall be placed for collection only on the day these refuse materials are to be collected, and such containers shall be maintained in a clean condition. Empty containers shall be removed promptly after collection.

Section 15. Combination or Subdivision of Lots. Should the Owner of a Lot own an adjacent Lot(s) and desire that two (2) or more such Lots be considered as one Lot, then such Lots shall (except as provided herein) be considered as one Lot for the purposes of this Article VII upon the recordation in the Registry, of an instrument by such Owner expressing such intent (such instrument to refer specifically to this section in this Declaration and to identify the Lots to be considered as one Lot for purposes of this Article VII, and a copy of such recorded instrument shall be promptly delivered by such Owner to the Architectural Control Committee); and in each such case, Building Envelopes, setback lines, and easements reserved in this Declaration shall be adjusted accordingly by the Architectural Control Committee. The Owner of any Lot which combines with all or a portion of a contiguous Lot shall be solely responsible for any costs which may result from such combination, including the costs of relocating any existing easements. With respect to combined Lots, such Lots shall constitute multiple Lots for purposes of payment of assessments. No Lot shall be subdivided by sale, lease or otherwise without the prior written consent of Declarant. Provided, however, Declarant reserves the right to change the size, boundaries or dimensions of any Lot owned by Declarant for any reason.

Section 16. Restricted Activities in Common Areas and Maintenance Areas. No cutting of vegetation, dumping, digging, filling, destruction or other waste shall be committed on the Common Areas or the Landscape Easements or other Maintenance Areas. No land-disturbing activity, placement of impervious surface, removal of vegetation, encroachment or construction or erection of any structure shall occur on any property specifically shown and designated on any Plat as "tree save area" or "tree protection area" or such similar designation without the express written consent of the Declarant (for so long as Declarant owns any portion of the Property), the Association and the applicable governmental authorities. There shall be no obstruction of the Common Areas or the Maintenance Areas, or of any drainage channels or facilities thereon, nor shall anything be kept or stored in the Common Areas or the Maintenance Areas, nor shall anything be altered, or constructed or planted in, or stored upon, or removed from, the Common Areas or the Maintenance Areas, without the prior written consent of the Declarant and the Association. Motor vehicles including, but not limited to, mini-bikes, snowmobiles, and motorcycles, may not be driven on the Common Area by any Owner, or any occupant or guest of an Owner, except on paved driveways and parking areas designated by the Board of Directors. Each Owner shall be liable to the Association and/or Declarant for any damage to any Common Area and/or the Maintenance Area caused by the negligence or willful misconduct of the Owner or his family, tenants, guests, agents, employees, or invitees. Provided, however, the provisions in this paragraph shall not apply to Declarant in connection with Declarant's construction activities on the Property. Except for work done by the Declarant in connection with the construction and marketing of the Lots and the Property, nothing shall be built, caused to be built or done in or to any part of the Property which will alter or cause any alteration to the Common Areas or any Improvements located thereon without the prior written

approval of the Association and the Declarant. The Declarant's approval shall be required until Declarant no longer owns any portion of the Property.

Section 17. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any Lot, other than in enclosed garages. All garage doors in the Project shall be kept closed except when in use. Grass, hedges, shrubs, vines and mass planting of any type on any Lot or any portion of the Property shall be kept trimmed and shall at regular intervals be mowed, trimmed and cut so as to appear neat and attractive. It shall be each Owner's responsibility to water the lawn and the plants on its Lot at regular intervals. Trees, shrubs, vines and plants which die shall be promptly removed and replaced. No leaves, trash, garbage or other similar debris shall be burned except as permitted by the appropriate governmental authority.

Section 18. Time-Sharing. There shall be no time-sharing or other co-ownership which allows multiple owners sequential possessory interests in a Lot.

Section 19. Recreational and Other Equipment. No recreational equipment (including, but not limited to, basketball backboards and hoops, trampolines, swing sets, tree houses, children's climbing or play apparatus and other equipment associated with either adult or juvenile leisure or recreation) shall be attached to the exterior of any Dwelling Unit or otherwise placed or kept on any Lot, except as approved in writing by the Architectural Control Committee.

(a) No such recreational equipment shall be located in such a manner as to constitute a nuisance or unsightly condition.

(b) Children's play toys and other moveable equipment of any type (such as lawn mowers, garden tools, etc.) shall not remain repeatedly overnight within any front yard, or within the side yards of any Lot, in such number or for such a long period of time as to create a continuing, unsightly condition, and such play toys and other moveable equipment of any type shall be stored in a Dwelling Unit or an enclosed garage or in an enclosure specifically approved for such storage by the Architectural Control Committee

Section 20. Parking; Storage.

(a) Roadways, driveways, streets and other exterior parking areas on the Property shall be used by Owners, occupants and guests for fully operable, inspected and registered four wheel passenger vehicles, two wheel motorized bicycles and standard bicycles only. No recreational vehicles, vans (other than non-commercial passenger vans), mobile homes, trailers, boats, trucks (unless licensed as a passenger vehicle and less than three-quarter ton capacity) or commercial vehicles (whether or not registered as a commercial vehicle with the State Department of Transportation and including any Owner's vehicle with any advertisement or other marketing material displayed on the exterior of such vehicle) shall be permitted to be parked within the Project, except on a day-to-day temporary basis in connection with repairs, maintenance or construction work

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on the Lot or if entirely enclosed in a Lot Owner's garage. No vehicles, trucks, vans, cars, trailers, construction equipment, etc. may be parked overnight on any Roadway within the Property.

(b) Commercial-use vehicles or trucks not involved with construction activity on the Property and having a carrying capacity and/or size designation greater than or equal to three-fourths (3/4th) ton or any Owner's vehicle with any advertisement or other marketing material displayed on the exterior of such vehicle shall not be permitted to park overnight on the Roadways, driveways or otherwise within the Property, unless stored in an enclosed garage. No vehicle of any size which transports inflammatory or explosive cargo may be kept within the Property at any time. No vehicles that are not in a condition to be normally operated or that do not have a current registration tag may be stored or situated on any Lot or on any street within the Property for more than ten (10) days unless stored in an enclosed garage.

(c) The Owner of each Lot will be responsible for providing on such Owner's Lot a sufficient paved parking area for its vehicles. There shall be a maximum of four (4) vehicles permitted per household for each Lot (provided, however, if an owner has four (4) vehicles, such Owner must park two (2) of the vehicles in its garage at night and the remaining vehicles must be parked in parking area on the Lot and shall not be parked in the street right of way). To enhance the streetscape in the Property, it shall be required that each Owner park its vehicles in the garage on the Lot whenever possible. All garages shall be used primarily for the storage of vehicles. No vehicles of any type shall be parked on the sidewalk, nor shall vehicles of any type be parked or stored on any part of a Lot other than in the garage or driveway of such Lot, excepting occasional overflow parking for guests or other reasonable purposes provided that no inconvenience is imposed on the Owners of other Lots. An Owner, his household or tenants shall not park any vehicle in any undesignated portion of the Common Area or overnight on the street rights of way within the Property. Parking in any Common Area facility parking lot shall be limited to the hours of operation of such facility. Owners shall be subject to sanctions if the parking regulations are violated. Sanctions may include reasonable monetary fines not to exceed \$100.00 per day and suspension of the right to vote and to use any facilities within the Common Area after Notice and Opportunity for Hearing (except drainage rights and rights of access to Lots). In addition, the Association after notice to the Owner, shall have the right to exercise self-help to cure violations, including the towing of vehicles at the Owner's expense. The Association shall have the right to require the Owners to register the license plate number of any vehicle of the Owner or any member of its household with the Association.

(d) No recreational vehicles or related equipment, including any boat, houseboat, trailer, all terrain vehicle, motor home or "camper" vehicle may be maintained, stored or kept on any portion of the Property, unless stored in an enclosed garage or in an enclosure specifically approved for such maintenance or storage by the Architectural Control Committee.

(e) No construction office trailers may be placed, erected or allowed to remain on any Lots during construction, except as approved in writing by the Architectural

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Control Committee. Provided, however, nothing herein shall prohibit Declarant from erecting or moving temporary buildings or trailers onto Lots owned by Declarant, as applicable, to be used as construction or sales offices or to be used as parking or storage areas. Other construction vehicles (trucks, vans, cars, construction equipment, equipment trailers, etc.) may be left overnight on the Property (including any Lot or Roadway) only in accordance with such rules as may be established by the Architectural Control Committee.

Section 21. Nuisances. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on such Owner's property. No Lot shall be used, in whole or in part, for the deposit, storage or burial of any property or thing that will cause such property to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within any Lot, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Project. There shall not be maintained on any Lot any plants or animals or device or thing of any sort whose activity or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Project. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Dwelling Unit or any unimproved Lot unless required by law and approved by the Architectural Control Committee. Nuisance activities as contemplated in this section shall be determined by the Board in its reasonable discretion.

Section 22. Other Prohibitions.

(a) The construction of improvements on Lots shall be completed pursuant to the Plans in accordance with Article VIII. In addition, Lots shall comply with all applicable building, plumbing, electrical and other codes.

(b) No vents, pipes or other appendages may extend from the front of any dwelling on a Lot, unless screened from public view by screening material or shrubbery approved by the Architectural Control Committee.

(c) Downspouts and gutters shall be constructed so as not to promote the erosion of the soil of any Lot.

(d) In addition to the requirements of Section 4 of this Article VII, exterior lighting shall be shielded and must be directed so as not to shine directly on another Lot.

Section 23. Clotheslines; Other Exterior Facilities; Vegetable Gardens. No clotheslines and no outdoor clothes drying or hanging shall be permitted in the Project, nor shall anything be hung, painted or displayed on the outside of the windows (or inside, if visible from the outside) or placed on the outside walls or outside surfaces of doors of any of the Dwelling

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Units or any other Improvements, and no awnings, canopies or shutters (except for those heretofore or hereinafter installed by Declarant) shall be affixed or placed upon the exterior walls or roofs of any Dwelling Units or any other Improvements, or any part thereof, nor relocated or extended, without the prior written consent of the Architectural Control Committee. Vegetable gardens shall be located in the corner portion of the rear yard of the Lot and limited in size to not greater than thirty feet by thirty feet.

Section 24. Antennae. To the extent permitted by law and subject to the federal telecommunications act, a DBS antenna, MDS antenna or transmission-only antenna may be erected on a Lot provided it is not greater than one (1) meter in diameter and prior approval of the Architectural Control Committee is obtained. No television broadcast antenna of any size or masts of any size attached to any of the above-listed antennas may be erected. Qualified antennae must be erected on the rear of the Lot or affixed to the rear of the Dwelling Unit, unless such placement impedes reception in which event such antenna may be erected in another location on the Lot provided that it is screened by landscaping or other material where reasonable and provided the Owner submits written notice to the Architectural Control Committee from the service provider documenting the need to install such antenna in a location other than in the rear of the Lot or the rear of the Dwelling Unit.

Section 25. Grading and Drainage. No Person shall alter the grading of any Lot without prior approval pursuant to Article VIII of this Declaration. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than Declarant may obstruct or rechannel the drainage flows after location and installation of drainage swells, storm sewers, or storm drains. The Declarant and the Association shall have a perpetual easement across the Property for the purpose of altering drainage and water flow. However, the exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's consent.

Section 26. Removal of Plants and Trees. No trees or shrubs, except for those which are dead or create a safety hazard, shall be removed without approval from the Architectural Control Committee in accordance with Article VIII of this Declaration. In the event of an intentional or unintentional violation of this Section, the violator may be required by the Architectural Control Committee to replace the removed tree with one (1) or more comparable trees of such size and number and in such locations as the Architectural Control Committee may determine necessary, in its sole discretion, to mitigate the damage.

Section 27. Stormwater Facilities, Wetlands, Lakes, and Other Water Bodies. All Stormwater Facilities, wetlands, lakes, ponds, and streams within the Property shall be water management areas only subject to fluctuations in water levels, and no other use thereof, including without limitation fishing, swimming, boating, playing, or use of personal flotation devices, shall be permitted without the prior approval of the Board. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of Stormwater Facilities, lakes, ponds, or streams within the Property. No structures shall be constructed on or over any body of water within the Property, except such as may be constructed by the Declarant or the Association. No Person shall dump grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic

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substances in any Stormwater Facilities, drainage ditch, stream, pond, or lake, or elsewhere within the Property, except that fertilizers may be applied to landscaping on Lots and Common Area and other portions of the Property provided care is taken to minimize runoff.

Section 28. Intentionally Deleted.

Section 29. Underground Storage Tanks; Hazardous Substances. No underground storage tanks for natural gas, propane, chemicals, petroleum products or any other toxic product will be allowed anywhere in the Property; provided that propane tanks may be permitted on a case by case basis as approved by the Architectural Control Committee. No potentially hazardous or toxic materials or substances shall be used or stored on any Lot other than normal household, lawn, pool, and garden products which shall be used by Owner in a manner not to permit spills or runoff of such materials onto the Lot, adjacent Lots or property, wetlands area, ponds or buffers. No activity shall be allowed which violates local, state or federal laws or regulations; provided however, the Board shall have no obligation to take enforcement action in the event of a violation.

Section 30. Governmental Requirements. Nothing herein contained shall be deemed to constitute a waiver of any governmental requirements applicable to any Lot and all applicable governmental requirements or restrictions relative to the construction of Improvements on and/or use and utilization of any Lot shall continue to be applicable and shall be complied with in regard to the Lots, including, without limitation, all impervious surface restrictions. Each Owner shall comply with all laws, regulations, ordinances and other governmental rules and restrictions in regard to the Lot(s) or other portion of the Property owned by such Owner (including, without limitation, applicable Legal Requirements, zoning and watershed laws, rules, regulations and ordinances).

Section 31. Occupants Bound. All provisions of this Declaration, any Additional or Supplemental Declaration and the Bylaws and any and all Rules and Regulations, use restrictions or Guidelines promulgated pursuant hereto or thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned.

Section 32. Impervious Surface Restrictions. Impervious Surface is a surface composed of a material that impedes or prevents the natural infiltration of water into the soil. Such surfaces shall include among others, concrete or asphalt surfaces, streets and parking areas, sidewalks, patios and structures that cover the land. In order to promote infiltration of stormwater runoff into the soil and to minimize direct and immediate runoff into streams and water supply impoundments, Impervious Surface limitations for Lots within the Property are imposed by the Town of Cary. As such, Impervious Surface in each Lot shall not exceed the Impervious Surface limitations set forth on the Plats creating such Lots, as such Plats may be recorded and re-recorded from time to time.

Section 33. Applicability to Declarant and Builders. The provisions of this Article are intended to restrict certain uses that may be harmful or affect the ambience or aesthetic appeal of the Property. The restrictions are not intended to prohibit Declarant from performing such work as may be necessary in the completion of the work in the Property. The restrictions of this

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Article shall therefore not be binding upon Declarant in the performance of any of the work required in order to complete the development, construction, marketing and sale of and within the Property. Furthermore, Declarant shall have the right, in its sole and absolute discretion, to exempt any Person purchasing a Lot from Declarant for the purpose of constructing a residence thereon for resale to a third party (such Person being hereinafter referred to as a "Builder") from any one or more of the provisions hereof during the period during which such Builder is constructing a residence thereon until such residence is sold by such Builder to a third party; and may furthermore grant to any such Builder, in Declarant's sole discretion, the right to exercise any one or more of the rights, easements and privileges reserved to Declarant under the terms hereof.

ARTICLE VIII

ARCHITECTURAL AND LANDSCAPING CONTROL

Section 1. General. Notwithstanding anything contained in this Declaration to the contrary, no Improvements, including, without limitation, site preparation on any Lot, change in grade or slope of any Lot, or erection of buildings or exterior additions or alterations to any building situated upon the Property, erection of or changes or additions in fences, hedges, walls and other structures, any landscaping, or any cutting of trees on any Lot, shall be commenced, erected or maintained on any portion of the Property, subject to the provisions of Article VIII, Section 7 hereof, until: (a) the Architectural Control Committee, appointed as hereinafter provided, has approved the plans, specifications and materials therefor and the location of such Improvements and has given its written approval for commencement of construction, all in accordance with the terms and requirements in the Architectural, Design and Landscape Guidelines; (b) the fees set forth in or contemplated in this Article VIII have been paid; (c) the contracts identified in this Article VIII have been executed; and (d) the receipt of all necessary permits for such work. In addition to any standards established pursuant to this Declaration, Declarant may establish, by Additional Declarations, architectural and landscaping control standards, guidelines and restrictions in regard to various Phases or sections of the Property. The provisions of this Article VIII shall not apply to the construction of any Improvements commenced, erected or maintained by Declarant on any Lot or upon any of the Common Areas or Maintenance Areas.

The Board may delegate to the Architectural Control Committee any powers or authority reserved or granted to the Board under this Article VIII.

Section 2. Composition of Architectural Control Committee. So long as Declarant owns any Lot or other portion of the Property, the members of the Architectural Control Committee shall be appointed by Declarant. At such time as Declarant no longer owns any Lot or other portion of the Property or at such earlier date as Declarant releases its right to appoint the members of the Architectural Control Committee, the members of the Architectural Control Committee shall thereafter be appointed by the Board. The members of the Architectural Control Committee shall be appointed annually and will be composed of at least three (3) and not more than seven (7) individuals, the exact number of members of the Architectural Control

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Committee to be designated from time to time by the body then having the authority to appoint such members (Declarant or the Board, as the case may be). The members of the Architectural Control Committee need not be Owners of property in the Project. In the event of the death or resignation of any member of the Architectural Control Committee, the party or body then having the authority to appoint members to the Architectural Control Committee shall have full authority to designate and appoint a successor. Members of the Architectural Control Committee may be removed and replaced at any time, with or without cause, and without prior notice, by the party or body then having the authority to appoint such members. Notwithstanding anything contained herein to the contrary, the Architectural Control Committee shall have the right, power and authority to employ and/or use the services of any architects, engineers, attorneys or other professionals as it deems necessary or advisable, in its sole discretion, to carry out the duties and obligations of the Architectural Control Committee as described in this Article VIII.

Section 3. Architectural and Design and Landscape Guidelines.

(a) The Architectural Control Committee shall, from time to time, publish and promulgate architectural, design, and landscape guidelines (the "Guidelines"). The Guidelines shall be explanatory and illustrative of the general intent of the development of the Property and are intended only as a guide to assist the Architectural Control Committee in reviewing plans and specifications for Improvements (including landscaping). The Guidelines shall also set out, among other things, the procedures for submission, review and approval of plans and specifications to the Architectural Control Committee and the fees to be imposed by the Architectural Control Committee, as more specifically described in Article VIII, Section 8 hereof. In any event, the Guidelines may be revised and amended at any time by the Architectural Control Committee, in its sole discretion (provided, however, after the Turnover Date the Guidelines shall not be revised or amended to allow less restrictive standards), and shall not constitute, in every event, the basis for approval or disapproval of plans, specifications and other materials (for the construction of non-landscape Improvements) submitted to the Architectural Control Committee for approval, such approval or disapproval to be granted at will.

(b) The portions of the Guidelines addressing landscaping Improvements may establish approved standards, methods and procedures for landscaping, landscape management and landscape maintenance in the Property, including the removal of trees. Such authorized standards, methods and procedures shall be utilized by Owners and their contractors and subcontractors.

(c) The Architectural Control Committee is also hereby authorized to publish and promulgate from time to time, and revise and amend at any time in its sole discretion, construction rules to be followed by all Owners and builders performing work or constructing or installing Improvements (including landscape Improvements) on the Property.

(d) No building, swimming pool, spa, statuary, mailbox, basketball goal or other sports equipment (permanent or portable), fence, wall, gazebo, or any other structure or improvement shall be placed, erected, commenced, constructed, demolished, rebuilt or altered upon any Lot or attached or affixed to any improvement upon any Lot

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or upon the Common Area nor shall any exterior addition to or change or alteration of a residence building be made, including, but not limited to, additions or alterations to any deck, fence, wall, driveway, or patio, planting or clearing and cutting of trees, color or painting of the exterior (other than maintenance to and touch-up painting to preserve the original exterior paint) or change of the type of exterior finish, the installation of aerials, satellite dishes, or awnings or the addition of any exterior attachment (such as a storm door) until an application, including plans and specifications showing the nature, kind, shape, height, materials, finishes, colors and location of the same (including floor plans and elevations) (the "Plans"), shall have been submitted in triplicate to and approved in writing by the Architectural Control Committee; provided, however, that no such approval shall be required for alterations solely to the interior of any residential structure. The Board may require a reasonable fee to accompany each application for approval. The Architectural Control Committee shall have the absolute and exclusive right to approve or disapprove Plans in its sole discretion and may approve or disapprove Plans based on purely aesthetic reasons, which in the sole discretion of the Architectural Control Committee shall be deemed sufficient. Absent an approval from the Architectural Control Committee the proposed alteration or improvement may not be commenced. THE RESTRICTIONS HEREIN CONTAINED SHALL HAVE NO APPLICATION TO THE DEVELOPMENT, IMPROVEMENT, MAINTENANCE AND REPAIR OF THE PROPERTY BY DECLARANT, BUILDER OR BY THE ASSOCIATION, AND NEITHER THE BOARD NOR THE ARCHITECTURAL CONTROL COMMITTEE SHALL HAVE ANY POWER OR AUTHORITY TO REVIEW OR REQUIRE MODIFICATIONS TO THE PLANS FOR CONSTRUCTION OR INSTALLATION OF IMPROVEMENTS BY DECLARANT OR BUILDER.

(e) The Architectural Control Committee may issue and amend the Guidelines from time to time and may publish and promulgate different Guidelines for different Phases, sections or portions of the Property.

Section 4. Definition of "Improvements". The term "Improvement" or "Improvements" shall mean and include any and all man-made changes or additions to a Lot, including, but not limited to, the location, materials, size and design of all buildings (including any exterior devices attached to or separate from buildings, such as heating and air conditioning equipment, solar heating devices, antennae, satellite dishes, etc.); storage sheds or areas; roofed structures; parking areas; fences; "invisible" pet fencing; pet "runs," lines and similar tethers or enclosures; walls; irrigation equipment, apparatus and systems; landscaping (including cutting or removal of trees); hedges; mass plantings; poles; driveways; ponds; lakes; changes in grade, slope or drainage patterns; site preparation; swimming pools; hot tubs; jacuzzis; tennis courts; tree houses; basketball goals; skateboard ramps; and other sports or play apparatus; signs; exterior illumination; and changes in any exterior color or shape. The definition of Improvements includes both original Improvements and all later changes to Improvements. The definition of Improvements, however, does not include the replacement or repair of Improvements previously approved by the Architectural Control Committee, provided such replacement or repair does not change exterior colors, materials, designs or appearances from that which were previously approved by the Architectural Control Committee.

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Section 5. Enforcement.

(a) It is Declarant's intent that the architectural control provisions of this Declaration and any Additional Declarations are to permit control of the architectural design and landscaping and to establish quality standards for construction and construction activity in the Project and to help preserve values of properties in the Project. All Owners, by purchasing property subject to this Declaration, acknowledge that a violation of any such provisions could result in irreparable harm and damage to other Owners of property in the Project and to Declarant, and to the values of their respective properties in the Project, a monetary measure of which harm and damage would be difficult to establish. Accordingly, the Association shall have the specific right (but not the obligation) to enforce and/or to prevent any violation of the provisions contained in this Article VIII by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions. Declarant hereby specifically reserves and grants unto the Architectural Control Committee, the Board and any agent or member thereof, the right of entry and inspection upon any portion of the Property for the purpose of determination by the Architectural Control Committee or the Board whether there exists any construction of any Improvement which violates the terms of any approval by the Architectural Control Committee, the terms of the Guidelines, the terms of this Declaration or any Additional Declaration, or the terms of any amendments hereto or thereto.

(b) As to nonconforming or unapproved Improvements, the Association may require any Owner to restore such Owner's Improvements to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of any unapproved Improvements) if such Improvements were commenced or constructed in violation of this Article. In addition, the Association may, but has no obligation to access the Improvements and or cause such restoration, demolition and removal to be performed and to levy the amount of the cost thereof as a Special Individual Assessment against the Lot or portion of the Property upon which such Improvements were commenced or constructed. In the event that it becomes necessary to resort to litigation to determine the propriety of any constructed Improvement, to remove any unapproved Improvement or otherwise to remedy a violation of the Guidelines, the Association shall be entitled to recover court costs, attorneys' fees and expenses incurred by the Association and/or the Architectural Control Committee in connection therewith, which costs, fees and expenses may be levied as a Special Individual Assessment against the Lot or other portion of the Property upon which such Improvement was commenced or constructed.

Section 6. Failure of the Architectural Control Committee to Act. The Architectural Control Committee shall approve or disapprove any plans and specifications and other submittals or reject them as being inadequate or unacceptable within thirty (30) business days after receipt thereof. If the Architectural Control Committee fails to approve or disapprove any plans and specifications and other submittals or to reject them as being inadequate or unacceptable within thirty (30) business days after receipt thereof, it shall be conclusively presumed that the Architectural Control Committee has disapproved such plans and specifications and other submittals. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the Architectural Control Committee may reject them as being inadequate

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or may approve or disapprove part, conditionally or unconditionally, and reject or approve the balance. The Architectural Control Committee is authorized to request the submission of samples of proposed construction materials.

Section 7. Variances. Upon submission of a written request for a variance, which request shall set forth, among other things, the extraordinary circumstances applicable to a Lot giving rise to the need for a variance, the Architectural Control Committee may, from time to time, in its sole discretion, permit Owners to construct, erect or install Improvements which are at variance with restrictions, requirements or provisions of this Declaration or any Additional Declaration from which a variance is permitted, pursuant to the terms hereof or thereof. In any case, however, the Architectural Control Committee may grant a variance only due to the existence of extraordinary circumstances applicable to a Lot, which extraordinary circumstance (i) has not been caused by the Owner of such Lot and (ii) materially impairs the ability of an Owner to construct a Dwelling Unit on such Owner's Lot. Any variance granted shall be in basic conformity with and shall blend effectively with the general architectural style and design of the community and shall not materially change the scheme of restrictions herein set forth. Written requests for variances shall be deemed to be disapproved in the event the Architectural Control Committee has not expressly and in writing approved such request within thirty (30) business days of the submission of such request. No member of the Architectural Control Committee shall be liable to any Owner for any claims, causes of action, or damages arising out of the grant or denial of any variance to any Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the Architectural Control Committee's right to strictly enforce the covenants, restrictions and architectural standards provided hereunder or under any Additional Declaration against any other Owner. If a variance is granted, the Owner receiving such variance shall comply with the more restrictive of the terms of the variance or applicable local, state or federal laws (including, without limitation, local zoning and development laws), and the granting of a variance shall not relieve any Owner from the obligation of complying with such laws.

Section 8. Fees Required by the Architectural Control Committee. The Architectural Control Committee, in its sole discretion, may require that each Person submitting plans and specifications for Improvements to the Architectural Control Committee pay one or more fees to the Architectural Control Committee or to Declarant as a condition to commencement of construction of such Improvements. Such fee(s), including the amount(s), payee and purpose(s) thereof, shall be established by, and may be increased from time to time by, the Architectural Control Committee and shall be set forth in the Guidelines.

Section 9. Notices and Submittals. Notices and submittals to the Architectural Control Committee shall be in accordance with the notice provisions set forth from time to time in the Guidelines.

Section 10. Limitation of Liability. No member of the Architectural Control Committee shall be liable for claims, causes of action or damages (except where occasioned by willful misconduct of such member) arising out of services performed pursuant to this Article VIII. Neither the Architectural Control Committee nor the members thereof, nor the Association, nor Declarant, nor any officers, directors, members, employees, agents or affiliates

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of any of them, shall be liable for damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval of, or the failure to approve or disapprove of, any plans and specifications. The approval of plans and specifications by the Architectural Control Committee shall not be deemed or construed as a representation or warranty of the Architectural Control Committee, Declarant, or any officer, director, member, employee, agent or affiliate of any of them, (i) that Improvements constructed in accordance with such plans and specifications will comply with applicable zoning ordinances, building codes, or other governmental or quasi-governmental laws, ordinances, rules and regulations or (ii) as to the structural soundness, quality, durability, suitability, fitness or proper functioning of Improvements constructed in accordance with such plans and specifications; and any responsibility or liability therefor is hereby disclaimed. Every person who submits plans and specifications, and every Owner, agrees that he will not bring any action or suit against Declarant, the Association, the Architectural Control Committee, the Board, or the officers, directors, members, employees, agents or affiliates of any of them, to recover any such damages and hereby releases, demises, and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given. Declarant shall be the sole party responsible for the performance of Declarant's obligations under this Declaration, and no other person, firm or entity, including, without limitation, any entity affiliated with Declarant, shall have any obligation or liability for Declarant's obligations under this Declaration.

Section 11. Diligent Construction. All construction, landscaping or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and no partially completed Dwelling Units or other Improvements shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion; provided that any minor construction (e.g. replacement of windows, residing, etc.) must be completed within two (2) months after the date upon which it commenced and all major construction (e.g. an addition to a dwelling unit) must be completed within four (4) months after the date upon which it commenced. The initial construction for a Dwelling Unit must be completed within nine (9) months after the date upon which it commenced, unless a longer time is approved by the Architectural Control Committee. Any damage to the Roadways, curbs or sidewalks or any part of any Common Area, Maintenance Area or any utility system caused by an Owner or Owner's builder or such builder's subcontractors shall be repaired by such responsible Owner. Any builder of Improvements and such builder's subcontractors on any portion of the Property shall keep such portion of the Property free of unsightly construction debris, in accordance with the construction rules established by the Architectural Control Committee (or, in the absence of such rules, in accordance with standard construction practices), and shall similarly keep contiguous public and private areas free from any dirt, mud, garbage, trash, or other debris which is occasioned by construction of Improvements. The Board may levy a Special Individual Assessment against an Owner's property in the Project to pay for the cost of repairing any damage to Roadways, curbs or sidewalks or any part of any Roadway, Common Area, Maintenance Area or utility system, to pay for the cost of cleaning public and private areas, including the Roadways in the Project, and to pay for the cost of the removal of garbage, trash or

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other debris, which are occasioned by the activities of an Owner or Owner's builder or such builder's subcontractors during the construction of Improvements.

Section 12. Miscellaneous. Members of the Architectural Control Committee shall not be compensated for their services; provided, however, the Association shall reimburse members of the Architectural Control Committee for reasonable out-of-pocket expenses associated with their activities hereunder. All costs, expenses and attorneys' fees of the Architectural Control Committee, including those incurred in connection with the exercise of their enforcement or other powers as provided herein, shall be borne by the Association; provided, however, nothing herein shall be deemed to negate the Association's right to an award of court costs, attorneys' fees and expenses in accordance with Article VIII, Section 5 hereof.

ARTICLE IX

INSURANCE; REPAIR AND RESTORATION; CONDEMNATION

Section 1. Board of Directors. The Board of Directors shall cause to be obtained and maintained at all times insurance of the type and kind and in no less than the amounts set forth below:

(a) Fire. All improvements and all fixtures and personal property included in the Common Areas and Maintenance Areas and all personal property and supplies belonging to the Association shall be insured in an amount equal to the current replacement cost (exclusive of land, foundation, excavation and other normally excluded items) as determined annually by the Board with the assistance of the insurance company providing coverage. The Board shall, at least annually, review the insurance coverage required herein and determine the current replacement cost of such improvements and fixtures and personal property and supplies. Such coverage shall provide protection against loss or damage by fire or other hazards covered by a standard extended coverage endorsement, windstorm and water damage, vandalism and malicious damage and all perils covered by a standard "all risk" endorsement. In addition to the provisions and endorsements set forth in Article IX, Section 3 and Section 4, the fire and casualty insurance described herein shall contain the following provisions:

- (i) standard "Agreed Amount" and "Inflation Guard" endorsements;
- (ii) construction code endorsements if the Common Area becomes subject to a construction code provision which would require changes to undamaged portions of any building thereby imposing significant costs in the event of partial destruction of such building by an insured peril;
- (iii) a waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the Owners and their employees, agents, tenants and invitees; and

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(iv) a provision that the coverage will not be prejudiced by act or neglect of one or more Owners when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

The fire and casualty insurance policy shall not contain (and the insurance shall not be placed with companies whose charters or bylaws contain) provisions whereby: (1) contributions or assessments may be made against the Association or the Owners; (2) loss payments are contingent upon action by the carrier's directors, policy holders or members; and (3) there are limiting clauses (other than insurance conditions) which could prevent Owners from collecting the proceeds.

(b) Public Liability. The Board shall also be required to cause to be obtained and maintained, to the extent obtainable, public liability insurance and officer's and director's liability insurance in such limits as the Board may, from time to time, determine to be customary for projects similar in construction, location and use as the Project, covering each member of the Board, the managing agent, if any, and each Owner with respect to his liability arising out of the ownership, maintenance, or repair of the Common Areas and Maintenance Areas, or from service on the Board; provided, however, in no event shall the amounts of such public liability insurance ever be less than \$1,000,000 per occurrence against liability for bodily injury, including death resulting therefrom, and damage to property, including loss of use thereof, occurring upon, in or about, or arising from or relating to, the Property or any portion thereof, nor shall the amount of such officer's and director's insurance be less than \$1,000,000 unless such coverage is determined by the Board to be unreasonably expensive. Such insurance shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner. The Board shall review such limits annually. Until the first meeting of the Board following the initial meeting of the Association Members, such public liability insurance shall be in amounts of not less than \$1,000,000 per occurrence for claims for bodily injury and property damage and such officer's and director's liability insurance shall be in amounts not less than \$1,000,000.

(c) Fidelity Coverage. The Board shall also be required to cause to be obtained and maintained fidelity coverage against dishonest acts on the part of all persons, whether officers, directors, trustees, employees, agents or independent contractors, responsible for handling funds belonging to or administered by the Association. The fidelity insurance policy shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the Association's estimated annual operating expenses and reserves. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

(d) Other. Such other insurance coverages, including flood insurance and worker's compensation, as the Board shall determine from time to time desirable.

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Section 2. Premium Expense. Premiums upon insurance policies purchased by the Board shall be paid by the Board and charged as a common expense to be collected from the Owners pursuant to the terms of this Declaration.

Section 3. Special Endorsements. The Board shall make diligent efforts to secure insurance policies that will provide for the following:

(a) recognition of any insurance trust agreement entered into by the Association;

(b) coverage that may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to the named insured and any insurance trustee; and

(c) coverage that cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board without prior demand in writing that the Board cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association or any Owner.

Section 4. General Guidelines. All insurance policies purchased by the Board shall name Declarant as an additional insured and be with a company or companies licensed to do business in the State of North Carolina and holding a rating of "A VIII" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Association and shall be issued in the name of and provide that all proceeds thereof shall be payable to the Association. Notwithstanding any of the foregoing provisions and requirements relating to insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, who shall have exclusive authority to negotiate losses under any policy providing such insurance.

Section 5. Insurance Proceeds. Subject to any limitations imposed by any applicable financing documents, the Association shall use the net proceeds of casualty insurance covered by it to repair and/or replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of casualty insurance paid to the Association remaining after satisfactory completion of repair and replacement shall be retained by the Association as part of the general reserve fund for repair and replacement of the Common Area and/or Maintenance Areas.

Section 6. Insufficient Proceeds. If the insurance proceeds received by the Association are insufficient to reimburse, to repair and/or replace any damage or destruction to person or property, the Board may levy a Special Assessment against the Owners to cover the deficiency.

Section 7. Owner's Personal Property. Neither the Association nor Declarant shall be liable in any manner for the safekeeping or condition of any personal property belonging to or used by any Owner or his family, tenants, guests or invitees, located on or used at the Common Areas. Further, neither the Association nor Declarant shall be responsible or liable for any damage or loss to any personal property of any Owner, his family, tenants, guests or invitees located on or used at the Common Areas. Each Owner shall be solely responsible for all

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personal property and for any damage thereto or loss thereof, and shall be responsible for the purchase of, at such Owner's sole cost and expense, any liability or other insurance for damage to or loss of such property. Neither the Association nor Declarant shall be responsible or liable for any damage or loss to or of any equipment or other personal property of any Owner, his family, tenants, guests or invitees located on or used at the Parking Area or other Common Areas. Each Owner shall be solely responsible for all personal property and for any damage thereto or loss thereof, and shall be responsible for the purchase, at such Owner's sole cost and expense, of any liability or other insurance for damage to or loss of such property.

Section 8. Owners' Obligation to Insure Owners' Property; Obligation to Rebuild. By virtue of taking title to a Lot within the Project, each Owner acknowledges that neither the Association nor Declarant has any obligation to provide any insurance for any portion of such Lot or any Dwelling Unit or other property located thereon.

Each Owner shall procure and maintain fire and extended coverage insurance as follows:

(a) **Fire.** Each Dwelling Unit upon a Lot shall be insured in an amount equal to at least eighty percent (80%) insurable replacement value. Such coverage shall provide protection against:

(i) Loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief;

(ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land; and

(iii) Such policies shall contain clauses providing form waiver of subrogation.

(b) **Public Liability.** Public liability insurance shall be secured by each Owner with limits of liability of no less than Three Hundred Thousand and No/100 (\$300,000.00) Dollars per occurrence.

Copies of said policies and renewals thereof shall be furnished to the Association. If the Insurance Company permits the Association to be named as an additional insured, all such policies shall name the Association as an additional insured as its interest appears.

Owners may, at their option, obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expense and such other coverage as they may desire.

In the event of a casualty loss, each Dwelling Unit for which insurance is required under Section 8(a) above shall be promptly and diligently repaired, replaced, and restored by the Owner thereof, unless (x) this Declaration is terminated, or (y) repair or replacement would be illegal under any state or local health or safety statute or ordinance.

Section 9. Security. The Association may, in its sole discretion, but shall not be obligated to, provide certain security and fire protection measures, and maintain or support

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certain other activities within the Project designed to make the Project safer than it might otherwise be. Provided, however, should the Association provide, maintain or support any such measures or activities, then neither the Association, Declarant, nor any successor of Declarant shall in any way be considered insurers or guarantors of security or fire protection within the Project, and neither the Association, Declarant nor any successor of Declarant shall be held liable for any loss or damage by reason or failure to provide or take any security or fire protection measures or for the ineffectiveness of any such measures undertaken. Each Owner and Occupant of any Lot or Dwelling Unit and each tenant, guest and invitee thereof acknowledges and understands that neither the Association, Declarant nor any successor of Declarant are insurers, and each such Owner, and Occupant of a Lot or Dwelling Unit and their tenants, guests and invitees hereby assume all risks for loss or damage to persons, property or contents belonging to any such persons.

Section 10. Condemnation. Whenever all or part of the Common Area shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages for and on account of such taking shall be paid to the Association. The Association, acting through the Board, shall have the right to negotiate and litigate the issues with respect to the taking and compensation affecting the Common Area, without limitation on the right of the Owners to represent their own interests. Each Owner, by his acceptance of a deed to a Lot or other portion of the Property, hereby appoints the Association as his attorney-in-fact to negotiate, litigate or settle on his behalf all claims arising from the condemnation of the Common Area. All compensation and damages paid to the Association on account of such a taking shall be used to restore the Common Area, provided such restoration is possible, with the excess, if any, to be retained by the Association and applied to future operating expenses by the Board, in its sole discretion. Nothing herein is to prevent Owners whose Lots or other property are specifically affected by the taking or condemnation from joining in the condemnation proceedings and petitioning on their own behalf for consequential damages relating to loss of value of the affected Lots or other property, or improvements, fixtures or personal property thereon, exclusive of damages relating to the Common Area. In the event that the condemnation award does not allocate consequential damages to specific Owners, but by its terms includes an award for reduction in value of Common Area, Lots or other property without such allocation, the award shall be divided between affected Owners and the Board, as their interests may appear, by the Board in its sole discretion.

ARTICLE X

EASEMENTS AND OTHER RIGHTS

Declarant and the Association and their successors and assigns, in addition to any other easements granted or reserved herein, shall have the following non-exclusive easements on, upon, over, across, through and under the Property. In addition, Declarant and its successors and assigns, shall have the right, on behalf of itself and the Association, to grant additional easements on, upon, over, across, through and under the Common Areas and any portion of the Property owned by Declarant as deemed to be in the best interests of and proper for the Project, including, but not limited to, easements in favor of Declarant, the Association, the Owners, and all their

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family members, guests, invitees and tenants and to various governmental and quasi-governmental authorities and agencies and private concerns for the purposes and uses hereinafter specified.

Section 1. Easements and Cross-Easements on Common Areas. Declarant, its designees and the Association, shall have the right to impose upon the Common Areas henceforth and from time to time such easements and cross-easements for ingress and egress, installation, maintenance, construction and repair of utilities and facilities including, but not limited to, electric power, telephone, cable television, master antenna transmission, surveillance services, governmental and quasi-governmental purposes, sewer, water, gas, drainage, irrigation, storm water management, lighting, television transmission, garbage and waste removal, emergency services, and the like as it deems to be in the best interests of, and necessary and proper for, the Project or any portion thereof.

Section 2. Use of Common Areas. Subject to any limitation or restriction set forth in this Declaration, Declarant declares that the Common Areas are subject to a perpetual nonexclusive easement in favor of Declarant, the Association and their designees, the Owners and all their family members, guests, invitees and tenants, and appropriate governmental and quasi-governmental agencies to use the Common Areas for all proper and normal purposes including, but not limited to, ingress, egress and access for the furnishing of services and utilities and for such use of the facilities as the same are reasonably intended in accordance with the terms of this Declaration and any Additional Declaration. If ingress or egress to any Lot or other portion of the Property is through any Common Area, any conveyance or encumbrance of such area is subject to this easement.

Section 3. Right-of-Way Over Roadways. Declarant is hereby granted, for the benefit of itself, its agents, employees, lessees, invitees, designees, successors and assigns, and grants to the Association, its agents, employees, tenants, invitees, designees, successors and assigns, and to each Owner of a Lot, their family members, tenants, guests, invitees, successors and assigns, and to each Occupant of a Lot and to all governmental and quasi-governmental agencies and service entities having jurisdiction over the Property while engaged in their respective functions, a perpetual non-exclusive easement, license, right and privilege of passage and use, both pedestrian and vehicular, over and across the Roadways for the purpose of providing access, ingress and egress to and from, through and between the Property and for the purpose of furnishing services and utilities and for the use of such facilities as the same are reasonably intended in accordance with the terms of this Declaration.

Section 4. Right of the Association and Declarant to Enter Upon the Common Areas and Maintenance Areas. Declarant hereby reserves for the benefit of itself, its successors in interest and assigns, and grants to the Association and all agents, employees or other designees of the Association an easement for ingress, egress and access to enter upon or over the Common Areas and Maintenance Areas for the purposes of installing Improvements or inspecting any construction, proposed construction, or Improvements or fulfilling the rights, duties and responsibilities of ownership, administration, maintenance and repair of Declarant or the Association, as appropriate. Such easement includes an easement in favor of the Association and Declarant to enter upon the Common Areas and Maintenance Areas now or hereafter created to use, repair, maintain and replace the same for the purposes for which they are initially designated

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or for such purposes as they are hereafter redesignated or as Declarant otherwise determines them to be reasonably suited. Notwithstanding the foregoing, nothing contained herein shall be interpreted as imposing any obligation upon the Association or Declarant to maintain, repair, or construct Improvements which an Owner is required to maintain, construct or repair.

Section 5. Easement for Encroachments; Reciprocal Easements. Declarant hereby reserves, for the benefit of itself, its successors in interest and assigns, and grants to the Association, the Owners, their successors and assigns, and to the Occupants of Lots, easements for encroachments, to the extent necessary, in the event any portion of the Improvements located on any portion of the Property now or hereafter encroaches upon any of the remaining portions of the Property as a result of minor inaccuracies in survey, construction or reconstruction, or due to settlement or movement. Any easement(s) for encroachment shall include an easement(s) for the maintenance and use of the encroaching Improvements in favor of Declarant, the Association, the Owners and all their designees. In addition, Declarant hereby reserves, for the benefit of itself, its successors in interest and assigns, and grants to the Association, the Owners, their successors and assigns, and to the Occupants of Lots reciprocal appurtenant easements between each Lot and such portion or portions of the Common Area as may be adjacent thereto and between adjacent Lots for the flow of rainwater, the repair of fences, walls, irrigation systems and similar improvements, and lawn maintenance.

Section 6. Maintenance Areas. Declarant hereby reserves, for the benefit of itself, its successors in interest and assigns, and grants to the Association, their successors and assigns, the following nonexclusive perpetual easements over certain areas of the Property as hereinafter described for the purposes hereinafter described:

(a) Easements for the purposes of landscaping and maintaining entryways and erecting and maintaining entrance monument(s) for the Project, over, across and under the Common Area and Roadways and over, across and under those portions of property outside of the Property for which Declarant or the Association has secured monument signage and landscaping easements (herein referred to as the "Entrance Monument Signage and Landscaping Easements"). Declarant and/or the Association shall have the right to landscape and maintain the areas of the Property so designated as entryways to the Project, to erect and maintain entrance monument(s) thereon bearing the name of the Project, and to erect and maintain lighting for such monument(s), plantings, landscaping, irrigation systems and other improvements typically used for entryways.

(b) Easements for the installation, maintenance, repair and removal of landscaping and landscaping amenities, including signage, lighting, monuments and irrigation systems, over, across and under the Common Area within the Property shown and designated as "Landscape Easements" or "Streetscape Buffer" or other similar designation on the Plats (herein referred to as "Landscape Easements") and access and maintenance easement measuring ten (10) feet in width from the common boundary line on Lots adjacent to any Landscape Easements.

(c) Easements for the installation, maintenance, repair and removal of sidewalks and greenway trails, if any, over, across and under the Roadways and greenway trails within the Property (herein referred to as the "Sidewalk Easements").

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(d) Easements for the installation, maintenance, repair and removal of Stormwater Facilities within the areas shown as "Drainage Easement," "Stormwater Control Structure and Access Easement," "S.D.E.," "Storm Drainage Easement," or other similar designation on the Plats.

All of the above-described areas and items shall herein be referred to as the "Maintenance Areas." The Association shall maintain the Maintenance Areas to a consistent standard of maintenance determined by the Board. Notwithstanding the foregoing, Association shall not be obligated to maintain the Maintenance Areas that are located on the Lots. The Association shall have the right, but not the obligation, to enter onto and maintain the Maintenance Areas that are located on the Lots. Each Owner shall be obligated to maintain all portions of any Maintenance Area located upon his or her Lot to the extent the Association does not maintain it.

Section 7. Utility and Drainage Easements. The Property shall be subject to all easements and rights-of-way for utilities and drainage shown on the Plats, including, but not limited to, those certain easements shown and designated on the Plats as:

- (a) "Public Utility Easement;
- (b) "Stormwater Control Structure and Access Easement" or "Drainage Easement" or "S.D.E"; and
- (c) "Private Utility Easement."

Such easements are hereby established for the use of Declarant, its successors and assigns, and are hereby established for the use of the Association, its successors and assigns, and include, without limitation, storm drainage easements of variable width, whether or not depicted on a Plat, over the entire area within all ditches along any Roadway.

Additionally, Declarant hereby reserves, for the benefit of itself, its successors and assigns, and grants to the Association, its successors and assigns, a non-exclusive easement and right-of-way over, under and along the Maintenance Areas for the installation and maintenance of lines, conduits, pipes and other equipment necessary for furnishing electric power, gas, telephone service, cable service, water, irrigation, septic system, sanitary sewer and drainage facilities, storm drainage and/or other utilities. Within the above-described easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation of utilities or which may change the direction or flow of drainage channels in the easements. This establishment of easements shall not prohibit the construction of driveways, at locations approved by the Architectural Control Committee, over such easements.

Section 8. Declarant's Right to Assign Easements; Maintenance of Easement Areas. Declarant shall have the right to assign and convey, in whole or in part, the easements created hereunder. The areas burdened by the easements and rights-of-way established in favor of Declarant on each Lot or other portion of the Property pursuant hereto, including any Improvements in such areas, which are not to be maintained by the Association or a public authority or utility, shall be maintained continuously by each Owner of such Lot or other portion of the Property, but no structures, plantings or other material shall be placed or permitted to remain upon such areas or other activities undertaken thereon which may damage or interfere

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with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. Notwithstanding the above, the Association and/or Declarant shall have the right, but not the obligation, to maintain the landscaping in the easement areas on any Lot.

Section 9. Easement Created for the Association and Declarant. Full rights of access, ingress and egress are hereby granted to Declarant for itself and the Association at all times over and upon any Lot or other portion of the Property for the exercise of the easement rights described in this Article X and for the carrying out by Declarant or the Association of the rights, functions, duties and obligations of each hereunder; provided, that any such entry by Declarant or the Association upon any Lot or portion of the Property shall be made with the minimum inconvenience to the Owner of such property as is reasonably practical, and any damage caused as a result of the gross negligence of Declarant, the Association or their employees or agents shall be repaired by Declarant or the Association, as the case may be, at the expense of Declarant or the Association, as the case may be.

Section 10. Additional Easements. Declarant shall have the right to grant over, under, across and upon any portion of the Property owned by Declarant, and the Board shall have the authority, in its sole discretion, to grant over, under, across and upon the Common Areas, such easements, rights-of-way, licenses and other rights in accordance with or to supplement the provisions of this Declaration or as may otherwise be desirable for the development of the Project, by the execution, without further authorization, of such grants of easement or other instruments as may from time to time be necessary or desirable. Such easements may be for the use and benefit of persons who are not Association Members or Owners. After such time as the members of the Board are no longer appointed by Declarant, the Board shall cooperate with Declarant and execute such grants of easements over the Common Areas as may be desirable to Declarant for the development of the Project and the preservation and enhancement of Declarant's interest therein.

Section 11. No Merger of Easements. The easements hereby established shall not be terminated by merger or otherwise, except upon execution and recordation of an instrument specifically terminating any such easement.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Duty of Maintenance. Except for those portions, if any, of a Lot which the Association may elect to maintain or repair hereunder, the Owner of any Lot shall have the duty and responsibility, at such Owner's sole cost and expense, to keep the Lot(s) owned by such Owner, including Improvements thereon and ground and drainage easements or other rights-of-way incident thereto, in compliance with the covenants, conditions, restrictions and development standards contained in this Declaration (to the extent applicable), and in any applicable Additional Declaration, in accordance with the provisions of the Guidelines, and in a well-

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maintained, safe, clean and attractive condition at all times. Such maintenance, as to unimproved and improved Lots, shall include, but shall not be limited to, the following:

- (a) Prompt removal of all litter, trash, refuse and waste;
- (b) Keeping land, including any lawns and shrub beds, well maintained and free of trash, uncut grass and weeds;
- (c) Keeping all sediment resulting from land disturbance or construction confined to the respective Owner's property; and
- (d) Complying with all governmental health and police requirements.

In addition, such maintenance, as to improved Lots, shall include, but shall not be limited to, the following:

- (e) Lawn mowing on a regular basis;
- (f) Tree and shrub pruning
- (g) Laying of mulch and pine straw;
- (h) Watering by means of a lawn sprinkler system and/or hand watering as needed;
- (i) Keeping exterior lighting and mechanical facilities in working order;
- (j) Keeping lawn and garden areas alive;
- (k) Removing and replacing any dead plant material;
- (l) Maintenance of natural areas and landscaping in accordance with the Guidelines (including the maintenance of any swales and medians and associated landscaping and related improvements fronting any Lot and not otherwise in the Common Area);
- (m) Keeping mailboxes, parking areas and driveways (including any driveway pipe) in good repair;
- (n) Repainting of Improvements; and
- (o) Repair of damage and deterioration to Improvements, it being understood and agreed that if any Improvements are damaged or destroyed by fire or other casualty, then within six (6) months following the date such damage or destruction occurs, the Owner of the Lot on which such Improvements are situated, must repair and restore such damaged Improvements (in accordance with plans and specifications approved by the Architectural Control Committee and otherwise in accordance with the terms and provisions of this Declaration and of each Additional Declaration applicable thereto).

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Notwithstanding anything contained herein to the contrary, the above-described maintenance responsibilities as to any Lot shall commence only upon a Plat showing such Lot being recorded in the Registry and upon the conveyance of such Lot by Declarant. If an Owner of any Lot has failed in any of the duties or responsibilities of such Owner as set forth herein, then the Board and Declarant, either jointly or severally, may give such Owner written notice of such failure and such Owner must within ten (10) days after receiving such notice (which notice shall be deemed to have been received upon deposit in an official depository of the United States mail, addressed to the party to whom it is intended to be delivered, and sent by certified mail, return receipt requested), perform the care and maintenance required or otherwise perform the duties and responsibilities of such Owner as described in herein. Provided, however, this cure period shall be extended for a time not to exceed sixty (60) days so long as Owner shall have commenced to cure such nonconformity and shall diligently prosecute the same. Should any such Owner fail to fulfill this duty and responsibility within such period, then the Association, acting through its authorized agent or agents, or Declarant (so long as it owns any portion of the Property), acting through its authorized agent or agents, either jointly or severally, shall have the right and power to enter onto the premises of such Owner and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any Person. The Owner of the Lot on which such work is performed shall be liable for the cost of such work, together with interest on the amounts expended by the Association or Declarant in performing such work computed at the highest lawful rate as shall be permitted by law from the date(s) such amounts are expended until repayment to the Association or Declarant, as the case may be, and for all costs and expenses incurred in seeking the compliance of such Owner with his duties and responsibilities hereunder, and such Owner shall reimburse the Association or Declarant, as the case may be, on demand for such costs and expenses (including interest as above provided). If such Owner shall fail to reimburse the Association or Declarant, as the case may be, within thirty (30) days after the mailing to such Owner of a statement for such costs and expenses, then, without limitation of any other rights of the Association or Declarant, the Association may impose a Special Individual Assessment against such Owner.

Section 2. Duration. This Declaration and the controls, covenants, restrictions and standards set forth herein shall run with and bind the Property and any Owner, and shall inure to the benefit of every Owner of a Lot in the Property and every Owner of any other portion of the Property, including Declarant, and their respective heirs, successors, and assigns, for a term of thirty (30) years beginning on the date this Declaration is recorded in the Registry. At the end of such thirty (30) year period, the easements, covenants, conditions and restrictions set forth herein shall automatically be extended for successive period(s) of ten (10) additional years, unless prior to the expiration of a respective period, by a vote of no less than eighty percent (80%) of all votes entitled to be cast by the Association Members, there shall be adopted a resolution to terminate these covenants and restrictions. Owners may vote in person or by proxy at a meeting duly called for such purpose at which a quorum is present, written notice of which shall have been given to all Owners at least thirty (30) days in advance of the date of such meeting, which notice shall set forth the purpose of such meeting. The foregoing shall not limit the right of Declarant to amend and/or supersede, in whole or in part, the terms and provisions hereof, as such right in favor of Declarant is described in Section 3 below.

Section 3. Amendment. Except as otherwise expressly provided herein and subject to the limitations hereinafter contained, this Declaration may be amended or modified at any

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time by a vote of no less than sixty-seven percent (67%) of all votes entitled to be cast by the Association Members, which vote is taken at a duly held meeting of the Association Members at which a quorum is present, all in accordance with the Bylaws. Provided, however, if sixty-seven percent (67%) of all votes entitled to be cast by the Association Members cannot be obtained at such a meeting, then this Declaration may be amended by obtaining the vote of sixty-seven percent (67%) of all votes present at a duly held meeting of the Association Members at which a quorum is present and by, within ninety (90) days of such vote, obtaining written consent to such amendment by Association Members holding a sufficient number of votes to comprise, along with such voting Association Members, a total of sixty-seven percent (67%) of all votes entitled to be cast by Association Members. Further provided, that any amendment or modification to this Declaration must be consented to by Declarant so long as Declarant is the Owner of any Lot or other portion of the Property, which consent Declarant may grant or withhold in its sole discretion. Any amendment or modification upon which the vote of Association Members is required pursuant to this Section 3 shall become effective when an instrument executed by the Association Members voting for such amendment or modification is filed of record in the Registry; provided, however, such an amendment or modification, in lieu of being executed by the Association Members voting for such amendment or modification, may contain a certification of the Secretary of the Association stating that the amendment or modification has been voted on and approved by the requisite number of votes of the Association Members, as provided in this Section 3.

Notwithstanding the terms of the immediately preceding paragraph of this Section 3, until the Turnover Date, Declarant, without obtaining the approval of any Association Member or any Owner or Owners other than Declarant, shall have the unilateral right, in its sole and absolute discretion, to make any amendments or modifications hereto which Declarant deems necessary or desirable, including, without limitation, amendments or modifications to any procedural, administrative or substantive provision of this Declaration.

Section 4. Release of Property. Until the Turnover Date, Declarant shall have the right, in its sole and absolute discretion, without the consent of the Association, any Association Member or any other Owner, to release any portion of the Property then owned by Declarant from the terms of this Declaration by recording a release in the Registry. After the recordation of such release, the portion of the Property described therein shall not be subject to the terms of this Declaration.

Section 5. Enforcement; Litigation. The Association shall be authorized to impose sanctions for violations of this Declaration, the Bylaws, or the Guidelines. Sanctions may include reasonable monetary fines not to exceed \$100.00 per day and suspension of the right to vote and to use any facilities within the Common Area (excepting drainage rights and rights of access to Lots) after notice and opportunity for a hearing. In addition, the Association, through the Board, after notice and opportunity for a hearing, shall have the right to exercise self-help to cure violations, and shall be entitled to suspend any services provided by the Association to any Owner or Lot in the event that such Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. The Association, Declarant or any Owner shall have the right, but not the obligation, on its own behalf or on behalf of others, to enforce the provisions of this Declaration or any Additional Declaration. Enforcement of the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens for

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which provision is made in this Declaration shall be by a proceeding at law or in equity (or otherwise, as provided in this Declaration) against any person or persons violating or attempting to violate any such control, covenant, condition, restriction, easement, development guideline, charge or lien, either to restrain such violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association, Declarant or any Owner to enforce any such control, covenant, condition, restriction, easement, development guideline, charge or lien shall in no event be deemed a waiver of the right to do so thereafter or of any other or future violation of any thereof. Except as otherwise expressly provided in this Declaration, the Board may not file any claim on behalf of the Association without first obtaining from a licensed attorney a detailed cost-benefit analysis relating to such claim, which cost-benefit analysis must include at least the following: (a) the nature and extent of the claim and the prospects of winning or losing the claim; (b) the prospects of settling the dispute early; (c) the cost of prosecuting the claim; and (d) the effect of pending litigation on resales and on home refinancings in the Property. After distributing such cost-benefit analysis to all Owners, unless expiration of any applicable statute of limitations is imminent, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of no less than sixty-seven percent (67%) of all votes entitled to be cast by the Association Members, which vote is taken at a duly held meeting of the Association Members at which a quorum is present, all in accordance with the Bylaws. The Board shall also attempt to meet with a potential defendant in order to investigate the possibility of any early settlement of the lawsuit or claim, and shall give the potential defendant notice of the claim or the potential litigation and a reasonable opportunity to cure the problem before the claim is filed. The immediately preceding two sentences shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration, (b) the imposition and collection of assessments, charges or other fees hereunder, (c) proceedings involving challenges to ad valorem taxation, (d) counter-claims brought by the Association in proceedings instituted against it or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services to the Project. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 6. Severability of Provisions. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that the remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

Section 7. Notice. Except as otherwise set forth herein expressly, whenever written notice to an Owner or Association Member (including Declarant) is required hereunder, such notice shall be given by the mailing of same, postage prepaid, to the address of such Owner or Association Member appearing on the records of Declarant or the Association. If notice is given in such manner, such notice shall be conclusively deemed to have been given by placing same in the United States mail properly addressed, with postage prepaid, whether received by the

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addressee or not. Declarant's address as of the date of recording of this Declaration is 2401 Weston Parkway, Suite 203, Cary, North Carolina 27513.

Section 8. Titles. The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

Section 9. No Exemption. No Owner or other party may exempt himself from the coverage hereof or obligations imposed hereby by non-use of such Owner's Lot(s) or other property located within the Project or the Common Area.

Section 10. Exculpation. It is expressly understood and agreed that nothing contained in this Declaration shall be interpreted or construed as creating any liability whatsoever, directly or indirectly, against Declarant or any of its officers, members, managers, employees, agents, attorneys, heirs, executors, legal representatives, successors or assigns (collectively, the "Declarant Related Parties") for monetary relief or damages. In particular, and without limiting the generality of the foregoing, if any proceeding shall be brought to enforce the provisions of this Declaration, the party instituting such proceeding shall not be entitled to take any action to procure any money judgment against any of the Declarant Related Parties.

Section 11. Law Controlling. This Declaration shall be construed and controlled by and under the laws of the State of North Carolina.

ARTICLE XII

STORMWATER FACILITY MAINTENANCE

Section 1. Stormwater Facilities. In accordance with the requirements of the Town of Cary two (2) permanent stormwater wet detention ponds will be located on a portion of the Common Area. The operation and maintenance of the Stormwater Facilities are subject to the terms of the Stormwater Facility Agreements and Stormwater Maintenance Manuals. Upon conveyance of the Common Area to the Association, the Association shall operate and maintain the Stormwater Facilities.

Section 2. Expenditure Priority. To the extent not inconsistent with other applicable Legal Requirements, the Association's obligations under the Stormwater Facility Agreements shall receive the highest priority for expenditures with the exception of expenditures for (i) assessments levied by the local governmental authorities (ii) ad valorem property taxes (iii) liability and hazard insurance required to be maintained by the Association (iv) any other expenditures which are required by law to have a higher priority.

Section 3. Reconstruction and Repair Fund. The Association shall maintain a fund for the reconstruction and repair of the Stormwater Facilities, which shall be separate from the fund for the routine maintenance of the Stormwater Facilities. Within five (5) years after Turnover, the reconstruction and repair fund shall contain the dollar amount reasonably determined from time to time by the Board to be adequate to pay for the probable reconstruction

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and repair cost of the Stormwater Facilities. The reconstruction and repair fund shall be listed as a separate line in the Association's budget and shall be kept in an account insured by the Federal Deposit Insurance Corporation or by another entity acceptable to the Board. The funds in the reconstruction and repair account shall not be commingled with any of the Association's other funds.

Section 4. Special Assessments. The Association shall charge Annual and/or Special Assessments, if necessary, to meet the Association's obligations under the Stormwater Facility Agreements and Stormwater Maintenance Manuals.

Section 5. Dissolution and Transfer. Notwithstanding any provision to the contrary contained in the Declaration and to the extent permitted by applicable law, the Association shall not enter into voluntary dissolution unless the Stormwater Facilities are transferred to a person or entity who assumes the maintenance obligation of the Stormwater Facilities as set forth in the Stormwater Facility Agreements and the Stormwater Maintenance Manuals, and that to the extent permitted by applicable law, the Association shall not sell, convey or otherwise transfer any interest in the Common Area on which the Stormwater Facilities are located to any party until the intended assumes the maintenance obligation of the Stormwater Facilities as set forth in the Stormwater Facility Agreements and the Stormwater Maintenance Manuals.

Section 6. Easement to the Town of Cary. Declarant hereby grants to the Town of Cary an easement for ingress, egress and regress over and across the Common Area on which the Stormwater Facilities exist for the purpose of inspecting the Stormwater Facilities and for the purpose of correcting, repairing, replacing, and maintaining the Stormwater Facilities and exercising the other rights of the Town of Cary that are provided for by the Stormwater Facility Agreements and the Stormwater Maintenance Manuals.

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IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of the day and year first above written.

BAKER RESIDENTIAL OF THE CAROLINAS, LLC

By: Baker Residential Limited Partnership, its Manager

By: Baker Companies, Inc., its managing general partner

By: Chg T. Baker
Name: Christopher T. Baker
Title: Vice President

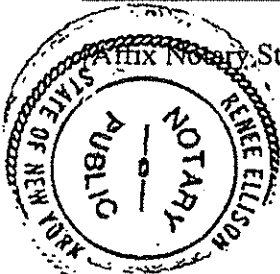
Westchester County, New York

I certify that the following person personally appeared before me this day and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Christopher T. Baker

(Print name of signatory in blank)

My Commission Expires:
RENEE ELLISON
Notary Public, State of New York
No. 01EL5021290
Qualified in Westchester County
Commission Expires Dec. 13, 2009

Renee Ellison
Notary Public
Print Name: Renee Ellison



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EXHIBIT A.

The Property

BEING all that certain tract or parcel of land containing 36.84 acres as shown on plat of survey entitled "Recombination Plat for Village Investments LLC & Town of Cary (Weycroft & Horton Subdivisions), White Oak Township, Wake County, North Carolina" dated September 7, 2006, prepared by Michael E. Dickerson, Professional Land Surveyor, of Withers & Ravenel and recorded in Book of Maps 2006, Pages 1979 and 1980, Wake County Registry, which plat is referenced for a more particular description.

AS SUBDIVIDED AND DESCRIBED MORE PARTICULARLY BELOW:

Phase 1:

Being all those certain tracts or parcels of land designated as Lots 1 through 8, inclusive; Lot 11; Common Open Space; Common Open Space/Recreation Area; Stormwater Control Structure and Access Easement Area containing 1.14 acres (49,509 square feet); and Stormwater Control Structure and Access Easement Area containing 0.71 acres (30,868 square feet) all as shown on plat of survey entitled "Hortons Creek Subdivision, Phase 1, Lots 1 through 11, White Oak Township, Wake County, North Carolina" dated March 7, 2007, prepared by Michael E. Dickerson, Professional Land Surveyor, of Withers & Ravenel and recorded in Book of Maps 2007, Pages 897, 898 and 899, Wake County Registry, which plat is referenced for a more particular description.

Phase 1 – Lots 9 and 10, Recombination:

Being all that certain tract or parcel of land designated as Lot 10, containing 0.44 acres (19,336 square feet) as shown on plat of survey entitled "Hortons Creek Sales Office, Phase 1, Lot 10, White Oak Township, Wake County, North Carolina" dated September 6, 2007, prepared by Michael E. Dickerson, Professional Land Surveyor, of Withers & Ravenel and recorded in Book of Maps 2007, Page 2185, Wake County Registry, which plat is referenced for a more particular description.

Phase 2:

Being all those certain tracts or parcels of land designated as Lots 12 through 27, inclusive; Lots 48 through 51, inclusive; and Lots 63 through 68, inclusive, all as shown on plat of survey entitled "Hortons Creek Subdivision, Phase 2, Lots 12-27, 48-51 & 63-68, White Oak Township, Wake County, North Carolina" dated April 10, 2007, prepared by Michael E. Dickerson, Professional Land Surveyor, of Withers & Ravenel and recorded in Book of Maps 2007, Pages 1577 and 1578, Wake County Registry, which plat is referenced for a more particular description.

Phase 3:

Being all those certain tracts or parcels of land designated as Lots 52 through 62, inclusive; and Lots 69 through 80, inclusive, all as shown on plat of survey entitled "Hortons Creek Subdivision, Phase 3, Lots 52-62 & 69-80, White Oak Township, Wake County, North Carolina" dated July 12, 2007, prepared by Michael E. Dickerson, Professional Land Surveyor, of Withers & Ravenel and recorded in Book of Maps 2007, Pages 1790 and 1791, Wake County Registry, which plat is referenced for a more particular description.

Phase 4:

Being all those certain tracts or parcels of land designated as Lots 28 through 47, inclusive; Lots 81 through 90, inclusive; and Common Open all as shown on plat of survey entitled "Hortons Creek Subdivision, Phase 4 (Lots 28-47, 81-90), White Oak Township, Wake County, North Carolina" dated July 12, 2007, prepared by Michael E. Dickerson, Professional Land Surveyor, of Withers & Ravenel and recorded in Book of Maps 2007, Pages 1785, 1786 and 1787, Wake County Registry, which plat is referenced for a more particular description.

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EXHIBIT B

Stormwater Maintenance Manual

[see attached]

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**STORMWATER CONTROL STRUCTURE
WET DETENTION BASIN MAINTENANCE AGREEMENT**

PROJECT: Horton Tract - Phase 1 TOC # 06-SB-001.

RESPONSIBLE PARTY: Baker Residential of the Carolinas, LLC PHONE #: (919) 380-0559

ADDRESS: 2401 Weston Parkway, Suite 203
Cary, NC 27513

- I. Monthly or after every runoff producing rainfall, whichever comes first:
 - a. Remove debris from trash rack.
 - b. Check and clear orifice of any obstructions.
 - c. Check pond side slopes; remove trash, repair eroded areas before next rainfall.
- II. Quarterly
 - a. Inspect the collection system (i.e., catch basin, piping, grassed swales) for proper functioning. Clear accumulated trash from basin grates, and basin bottoms, and check piping for obstructions.
 - b. Check pond inlet pipes for undercutting. Repair if necessary.
 - c. Repair any broken pipes.
 - d. Replace rip rap that is choked with sediment.
- III. Semi-Annually
 - a. Remove accumulated sediment from bottom of outlet structure.
 - b. Check pond depth at various locations. If depth is reduced to 75% of original design depth, remove sediment to original design depth.
 - c. Reseed grassed swales twice yearly. Repair eroded areas immediately.
- IV. General
 - a. A natural buffer is encouraged along the banks of the pond where appropriate. Annual mowing can be used to maintain a low buffer. Vegetation along the dam should be mowed on a regular basis to discourage root intrusion.
 - b. Wetland plants are encouraged along pond perimeter, however, invasive species such as cattails shall be removed.
 - c. All components of impoundment system to be kept in good working order.
 - d. In case the ownership of the impoundment Transfers, the current owner shall, within thirty (30) days of transfer of ownership, notify the Town of Cary, Engineering Department of such ownership transfer.
 - e. This property and impoundment is also subject to the Operation and Maintenance Manual filed for this project.

[SIGNATURE PAGE FOLLOWS]

Return: Thomas L. Horstman, CPESC, CFM
Erosion Control Supervisor
Engineering Department
Town of Cary
PO Box 8005
Cary, NC 27512

WAKE COUNTY, NC 269
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
06/19/2007 AT 11:57:44

BOOK: 012609 PAGE: 00032 - 00034

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Baker Residential of the Carolinas, LLC hereby acknowledges that it is the financially responsible party for maintenance of this impoundment. While it owns the impoundment, Baker Residential of the Carolinas, LLC will perform the maintenance as outlined above, as part of the Certificate of Compliance with Stormwater Regulations received for this project. Upon the conveyance of the impoundment, the transferee shall become the financially responsible party for maintenance of the impoundment.

Baker Residential of the Carolinas, LLC

By: Baker Residential Limited Partnership, its Manager

By: Baker Companies, Inc., its managing general partner

By: CT. Baker
Name: Christopher T. Baker
Title: Vice President

Wake County, North Carolina

I certify that the following person personally appeared before me this day and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Christopher T. Baker
(Print name of signatory in blank)

My Commission Expires:

9/8/2008

[Affix Notary Stamp or Seal]

Pamela Lee Whorley
Notary Public
Print Name: Pamela Lee Whorley

